United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit
FILED JUN 18 1958
Joseph W. Stewart
CLERK

No. 14,355

CHARLES H. PLUMMER, JR.,

Appellant,

v.

38

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Washington, D. C. ROBERT I. THIEL Printer EX 3-0625

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JOINT APPENDIX

121 [Filed in Open Court, July 6, 1954]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Impannelled May 3, 1954, Sworn in on May 4, 1954

The United States of America	:	Criminal No. 726-54
vs.	:	Grand Jury No. 738-54
Charles H. Plummer, Jr.	:	Vio. 22 D.C.C. 3501a

The Grand Jury charges:

On or about June 18, 1954, within the District of Columbia, Charles H. Plummer, Jr., did take immoral, improper and indecent liberties with Maria N. Simpson, a female child under the age of sixteen years, that is, about eleven months of age, with intent of arousing, appealing to and gratifying the lust, passions and sexual desires of the said Charles H. Plummer, Jr.

/s/ Leo A. Rover

Attorney of the United States in
and for the District of Columbia

A TRUE BILL:

/s/ Raymond W. Pello

Deputy Foreman.

123 [Filed Sep. 16, 1955]

On this 16th day of September, 1955, came again the parties aforesaid, in manner as aforesaid, the same jury as aforesaid in this cause; whereupon, the jury returns into Court at 10 a.m. and delivers their sealed verdict; thereupon, the jury upon their oath say that the defendant is guilty as indicted.

The case is referred to the Probation Officer of the Court and the defendant is remanded to the District of Columbia Jail.

By direction of

Luther W. Youngdahl

Presiding Judge
Criminal Court # Three

* * *

125 [Filed Oct. 7, 1955]

JUDGMENT AND COMMITMENT

On this 6th day of October, 1955 came the attorney for the government and the defendant appeared in person and by counsel, John D. Fauntleroy, Esquire.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of

Violation of Section 3501a, Title 22, D. C. Code as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Three (3) years to Nine (9) years

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Luther W. Youngdahl

United States District Judge

126 [Filed Jul. 24, 1957]

Motion to vacate sentence and discharge the defendant pursuant to Title 28 Section 2255 U.S. Code and leave to proceed without prepayment of cost pursuant to Title 28 Section 1915 U.S. Code.

Statement

Rules governing correct legal procedure upon arrest is stated in the Federal Rules of Criminal Procedure. Rules 4(a) 4(b) and 5(a) 5(b) 5(c), clearly states the cause for prompt arraignment. (Emphasis Added)

The rule for arrest without a warrant is stated in Corpus Juris Secundum, Volume 6, at page 587, and in other cases using the rule. (Emphasis Added)

Comes now Charles H. Plummer, the defendant, and moves this Honorable Court to vacate the sentence of Three (3) to Nine (9) years now being served in the D. C. Reformmatory at Lorton V.A. imposed by the Honorable Judge Youngdahl. In Re: United States v. Charles H. Plummer, Criminal No. 726-54. That this court serve notice to the

127 U. S. Attorney requiring a prompt hearing and that this court order the body of the defendant's be produce in court in compliance with United States v. Paglia, (2nd C.A.A.) 190 F.2d 445, (1951) and after hearing order defendant discharge for the cause here in stated below as follows:

"That the defendant was arrested on the 19th day of June 1954, at 4:00 A.M. or 6:00 A.M. by a complaint for a violation of Title 22 Section 3501(a) D.C. Code. That evidence was secured from a search (inspection or blood test) at 9:00 A.M. before defendant was arraigned at approximately 11:29 A.M. of the above said date."

Allegation of the errors and their results that deprived defendant of the due process of law.

The record in the defendant's case do not conclusively show he is entitled to no relief, when the record shows without any question that the arrest was made on mere belief that a felony had been committed on the complaint. When it was held by Doctor, A. Correlos, "that the child's injury was undetermined." The Supreme Court held in Mallory v. United States, No. 521- October Term, 1956 (U.S.S.C.) page 5 ... Rule 4(a) provides: "If it appears from the complaint that there is probable cause to believe that an offense has been committed and that

the defendant has committed it, a warrant for the arrest of the defen-

128 dant shall issue. ..." Rule 4(b) requires that the warrant "shall command that the defendant be arrested and brought before the nearest available commissioner." And Rules 5(b) and 5(c) reveal the function of the requirement of prompt arraignement (See Rules 5(b) and 5(c) on page 5).

The requirement of Rule 5(a) is part of the procedure devised by Congress for safeguarding individual rights. The rule clearly states that arrested persons be arraigned "without unnecessary delay" as held in the case of Upshaw v. United States, 335 U.S. 410.

The evidence obtained in the defendants case by search inspection or blood test, also violated the rule of the Supreme Court in United States v. Lefkowitz, 285 U.S. 452, 467, (1938) the rule held that "an arrest may not be used as a pretext to search for evidence. The rule is applied in McKnight v. United States, 87 U.S. App. D.C. 151, 183, F.2d 977, (1950); Henderson v. United States, 12 F.2d 528 (4th Cir. 1928).

The record of defendant's trial conclusively show that without the evidence secured from the illegal search the case could not meet the requirements of the law. The Supreme Court held in United States v. Rike, 332 U.S. 581, 585, (1949); Byars v. United States, 273 U.S. (1927) "the validity of the arrest is uneffected by whether or not the police happened to have guessed correctly, but rest solely on the facts known to them at the time of arrest. It is therefore immaterial that the later find incriminating evidence."

129 The rule for arrest without a warrant is stated in Corpus Juris Secrundum, Volume 6, at page 587, whether or not an officer has probable cause to subject a person guilty if a felony is determined by the facts known to him at the time of the arrest. "...the knowledge or information acquired after or as a result of the arrest cannot relate back, so as to justify an arrest initially made on mere suspicion.

To hold that the evidence secured from the said search by the defendants ignorance to the protection of the Fifth (5) Amendment of the

U. S. Constitution, that renders immunity against self incrimination is admissiable, would be contrary to the Constitution and the demands of justice. And it might be held here in, as in Johnson v. Zerbst, 304 U.S. 458, (1937), that the guaranty would be nullified by a determination that an accused's "ignorant" failure to clain his rights removes the protection of the Constitution.

The defendant was deprived of the immunities sat-forth in the foregone entitled cause, and the Supreme Court held in United States v. Hayman, 342 U.S. 205, that "one claiming his Constitutional rights were violated, and he was deprived of his liberty and held in custody, that it was the duty of the court to investigate such allegation even though such may appear unasumable on the face of the record.

130 The attorney for the defendant failed to present a motion to the court to have the evidence suppressed that was obtained without the necessary warrant's of arrest and search.

The Supreme Court held in Coailed v. United States, 255 U.S. 298, 312, 313, (1921) "we think rather that it is a rule to be used to secure the ends of justice under the circumstances presented by each case a rule of practice must not be allowed for any technical reasons to prevail over a Constitutional right.

In Wrightson v. United States, 94 App. D.C. 390-93, 222 F.2d 556, 558, (D.C. Cir, 1951), that the fourth (4th)Amendment covers warrant is established.

When counsel for defendant failed to show that defendant was arrested without a warrant and ellegally detained to secure evidence, and that defendant's Constitutional rights of the fourth (4) Amendment had been violated by the ellegal arrest or investigation, in his address to the court. He therefore allowed the defendant to be convicted upon the infringements of the Constitution.

It has long been recognized that an unskilled layman must rely upon those that are trained in law to protect an accused as far as his Constitutional rights are concerned, Zerbart v. United States, 185 F.2d 124 (C.A. 5,1950); Glasser v. United States,315 U.S. 60, 62, 70, S.Ct.

Ed. 680 (1949); Johnson v. Zerbst, 304 U.S. 458, (1937).

131 Conclusion

Defendant did not have the benefit of counsel in the preparation of his motion. The court must be extremely liberal in it's approach towards defendant's pleading and benefit if in doubt where they may exist should be resolved in defendant's favor, therefore it will be necessary to consider the imposition and restriction which a court may place upon an indigent defendant in the light of the decision of the Supreme Court in Griffin v. People of the State Of Ill., 351 U.S. 12, 76, S. Ct. 585 (1956).

Defendant prays that this Honorable Court will grant him the relief he seeks in the above entitled motion.

Respectfully Submitted

/s/ Charles H. Plummer Jr.
Charles H. Plummer. PoSe
Box-25 Lorton V.A.

Subscribed and sworn before me this 22 day of July 1957.

/s/ Wade G. Maddox
Notary Public

My Commission Expires October 31, 1958

[Filed Oct. 31, 1957]

Motion denied. The motion, files and records of the case conclusively shows that the petitioner is entitled to no relief.

/s/ Luther M. Youngdahl

132 [Filed Jan. 15, 1958]

MEMORANDUM PURSUANT TO RULE 92-A IN SUPPORT OF DEFENDANT'S APPLICATION TO PROCEED ON APPEAL WITHOUT PRE-PAYMENT OF COSTS

QUESTIONS PRESENTED

1. Whether or not counsel in the trial court was derelict in not objecting by appropriate legal procedure, certain evidence admitted at the trial.

2. Whether or not counsel was derelict in not utilizing a defense of insanity at the trial of the above-entitled case.

ARGUMENT

After a very careful and studied perusal of the files and records in the above-entitled case, counsel moves this Honorable Court to allow the defendant to proceed on appeal without pre-payment of costs.

It is blatantly apparent that certain defenses should have been raised prior to and or during the trial of this cause. It is readily observable that there was a definite question as to the (a) illegality of the detention, (b) the taking of blood test samples, and (c) delay in arraignment. Such questions could only be resolved by counsel vigorously protesting to what appears as patent discrepancies in police procedure.

The most disturbing and concomitantly apparent ommission by counsel is the complete lack of utilizing insanity as a defense in the above-entitled cause. The record conclusively shows that there was a definite question as to the sanity of the defendant and counsel should have utilized this as a defense.

CONCLUSION

The files and records in the above-entitled cause conclusively show that there was a violation of Article VI of the United States Constitution as it applies to the right of the defendant to the assistance of counsel for his defense.

/s/ Bruce R. Harrison
Bruce R. Harrison

133 [Certificate of Service]

134 [Filed Jan. 27, 1958]

Notice of Appeal

Name Of Appellant, Charles H. Plummer, Jr.

Name Of Counsel, In Pro. Se.

Offense, Miller Act, D.C. Code 22-3501(a)

Sentence 3 to 9 years on Oct. 6, 1955

Date Of Judgment Oct. 31st. 1957 Motion of Titl 28.

Section 2255 DENIED.

Name Of Prison Where Now Confined: D.C. Reformatory, Lorton,V.A.

I Charles H. Plummer, the above named appellant hereby appeal to the United States Court Of Appeals For The District Of Columbia Circuit from the letter rendered or order on the 31st day of October 1957.

/s/ Charles H. Plummer, Jr.
Appellant Pro. Se.

135 [Certificate of Service]

136 [Filed Nov. 15, 1957]

Affidavit In Support Of Application To Proceed On Appeal, denial of Motion of 10/31/57 Without Prepayment Of Costs

I, Charles H. Plummer, Jr., being first duly sworn according to law, depose and say that I am the defendant in the above-entitled cause, and, in support of my application for leave to proceed in said cause without being required to prepay fees or costs, state as follows:

1. That I am a citizen of the United States.

2. That because of my poverty I am unable to pay the costs of said suit or action.

3. That I am unable to give security for the same.

4. That I believe I am entitled to the redress I seek in said suit or action.

5. That the nature of my cause of action is brief stated as follows:

137 A. That I was denied a hearing for illegal detention by the trial court.

B. That I was held in illegal detention from about 4:00 A.M. until 9:00 A.M. for the purpose of making a blood test examination search on an open charge. I was then booked and arraigned at about 11:29 A.M. June 19th, 1954.

C. That I was deprived of my rights to the protection of the (4,th) and (5,th) Amendment of the Federal Constitution by the failure of the police to advise me of my rights that I could refuse to take such a test which resulted in the findings of self incriminating evidence, and by my counsel failure to protest against the use of the evidence siezed in illegal

detention from and arrest made on probable cause.

/s/ Charles H. Plummer, Jr.
Appellant Pro. Se.
Box-25 Lorton V.A.

[Jurat]

[Filed Jan. 27, 1958]

Leave to Appeal Granted without prepayment of Costs.

/s/ Luther W. Youngdahl

139

CRIMINAL DOCKET

UNITED STATES DISTRICT COURT

CASE CLOSED for the District of Columbia

PARTIES	ATTORNEYS	Criminal No.
UNITED STATES	U. S. Attorney	726-54
vs.		
CHARLES H. PLUMMER, JR.	T.-A. Miller - John D. Fauntleroy B. R. Harrison, 1808 11th St. N.W. G. J. No. 738-54	Charge: VIO: T. 22 D.C.C. Sec. 3501a

Date	Proceedings
1954 Jul 6	Presentment and Indictment filed (1 count)
	Copy of indictment given to deft. Cert. filed.
9	ARRAIGNED, Plea NOT GUILTY entered
	Referred for appointment of counsel
	Deft. remanded to the District of Columbia Jail
	MORRIS, J. (Reporter-Powell) Cert. filed
Jul 12	ORDER appointing T. A. Miller as counsel to defend, filed. MORRIS, J.
Jul 14	Appearance of Theodore A. Miller entered, filed.
Sep 15	Motion of deft. for a Mental Examination with Affidavit, filed. Cert. of Serv.
Sep 23	ORDER for Mental Examination, filed. PINE, J. (Reporter- atson)

1954 Oct 26 Affidavit in support of application for leave to proceed in FORMA PAUPERIS, GRANTED, filed. KIRKLAND, J.

Oct 27 Report of Mental Examination of deft. by Ettore DeFilippis, M.D. stating that deft is of Unsound Mind, filed.

Nov 9 ORDER for hearing on 11-9-54 to determine Mental competency, filed. LAWS, C.J.

Nov 16 LUNACY INQUISITION:

HEARING BY COURT TO DETERMINE MENTAL COMPETENCY OF DEFT:

FINDING: Unsound mind;

Deft. remanded to the District of Columbia Jail.

(Order to be presented)

Attorney Theodore A. Miller present.

TAMM, J. (Reporter - Spatzer)

140 Nov 19 ORDER committing deft. to the custody of the Attorney General. TAMM, J.

1955 Apr 13 Copy of findings from Bureau of Prisons, stating that deft. is able to understand proceedings against him and could assist in his defense, filed.

Apr 15 Govt's Motion for Judicial Determination of the Mental Competency of the Deft. to stand trial, filed. Cert. of Service.

Apr 29 Judicial determination of the mental competency of defendant granted;

HEARING BEGUN:

FINDING: Defendant mentally competent;

Order finding Defendant mentally competent, filed.

Defendant COMMITTED to the District of Columbia Jail. Commitment issued.

Attorney T. A. Miller present:

McGARRAGHY, J. (Reporter-Delehanty)

May 24 ORDER vacating appointment of Theodore A. Miller and appointing John D. Fauntleroy as counsel to defend, filed. LAWS, C. J.

1955 Jun 15 Affidavit in support of Application for leave to proceed without prepayment of costs, GRANTED, filed.

LETTS, J.

Jul 27 JURORS FROM CRIMINAL COURTS ONE & TWO SWORN ON VOIR DIRE; JURY SWORN:

Kathleen Long	Elbert G. McLeese	Frederick G. Settle
Loraine A. Lenhart	John H. Quander	Edward G. Talbert
Sidney A. Loving	Reginald L. Roberts	Joseph A. Turner
Mary M. McGrath	Elizabeth M. Schrom	Elsa B. Blue

Two alternate jurors Sworn:

a. 1. Walter R. DePorter A.2. Betty Z. Engel

Court directs Mistrial;

CASE PASSED;

Defendant remanded to the District of Columbia Jail;

Attorney John D. Fauntleroy present.

KIRKLAND, J. (Reporter-Frye) Cert. filed.

Sep 14 JURORS FROM CRIMINAL COURTS NOS. 2 & 3 SWORN ON VOIR DIRE; JURY SWORN:

Edward R. Colliflower	Frank Gantz	Ernestine C. Ingram
Wallace M. Coleman	Louis A. Haley	Mildred L. J. Johnson
Howard C. Davis	James V. Herring	David D. Jones
George A. Ellinger	Alexander P. Hoover	Marie M. Jones

Two alternate jurors Sworn:

a.1. Harry J. Keegan a.2. Charles J. Logue

141 Case RESPITED until 11:00 a.m. to-morrow;

Deft. remanded to the District of Columbia Jail;

Attorney John D. Fauntleroy present.

YOUNGDAHL, J. (Reporter-Harrison) Cert. filed.

Sep 15 TRIAL RESUMED; same jury:

Alternate jurors discharged; Court orders food for jury;

Jury retires to consider their verdict;

whereupon the Court directs the taking of a sealed verdict;

the jury returns their sealed verdict and is excused at 2:15 p.m. until to-morrow morning at 10:00 a.m. The defendant is remanded to the District of Columbia Jail;

Attorney John D. Fauntleroy present.

YOUNGDAHL, J. (Reporter-Harrison) Cert. filed.

1955 Sep 16 THE JURY RETURNS INTO COURT at 10:00 a.m. and delivers its Sealed Verdict;

VERDICT: Guilty as indicted;

Case is REFERRED to the Probation Officer of the Court;

Deft. remanded to the District of Columbia Jail;

Verdict of jury, filed;

Attorney John D. Fauntleroy present.

YOUNGDAHL, J. (Reporter-Harrison) Cert. filed.

Oct 6 SENTENCED to imprisonment for a period of

Three (3) years to Nine (9) years.

Attorney John D. Fauntleroy present.

YOUNGDAHL, J. (Reporter-Delehanty)

Oct 7 Judgment & Commitment of 10-6-55, filed.

YOUNGDAHL, J.

Oct 13 Affidavit in support of application for leave to proceed on Appeal without prepayment of costs, filed.

Oct 17 Affidavit in support of application for leave to proceed ON APPEAL without prepayment of costs, GRANTED, filed.

YOUNGDAHL, J. Transcript to be furnished at expense of the United States.

NOTICE OF APPEAL, filed.

Oct 24 Election against Service of Sentence signed by deft., filed.

Nov 2 Deft's. refusal to sign election against service of sentence, filed.

Nov 4 DESIGNATION of RECORD, filed. Cert. of Serv.

Nov 15 TRANSCRIPT OF PROCEEDINGS:

Vol 1, Pages 1-119, September 14 & 15, 1955, filed.

(Court's copy) (Reporter-Harrison)

142	1955 Nov 16	Counterdesignation of Record, filed. Cert. of Serv.
	Nov 23	Record on Appeal delivered to Court of Appeals in Forma Pauperis. Clerk's Fee $4.80.
	1956 Apr 16	Certified copy of Judgment of the U. S. Court of Appeals for the District of Columbia Circuit AFFIRMING the judgment of the U. S. District Court for the District of Columbia, filed. dated - March 29, 1956.
	May 11	Letter from the defendant in the nature of a motion for reduction of sentence, filed.
	May 24	Letter from defendant in the nature of a motion for reduction of sentence, DENIED. The motion and records and files in the case conclusively show that the defendant is entitled to no relief under Title 18, U.S.C., Sec. 2255. YOUNGDAHL, J. (N)
	Jun 21	Certified copy of ORDER from U. S. Court of Appeals for the District of Columbia Circuit AFFIRMING the Judgment of the U. S. District Court for the District of Columbia, PRESENTED. LAWS, C.J. (Reporter-Markwalter)
	1957 Feb 19	Letter from the U. S. Court of Appeals returning the record on appeal containing the District Court's file copy of the reporter's transcript of proceedings or portions thereof, filed. Receipt acknowledged. (Record in File Room)
	July 24	MOTION of DEFENDANT to vacate sentence and discharge the Deft. pursuant to Title 28, Sec. 2255 U. S. Code, filed. Cert. of Serv. (Prepared by Deft.)
	Sep 27	Government's reply to deft's. motion to vacate sentence pursuant to Sec. 2255, Title 28, U.S. Code, filed. Cert. of Serv.
	Oct 2	Answer of Deft. to the Government's opposition against Deft's. motion pursuant to Title 28, Sec. 2255, U. S. Code and leave to proceed pursuant to Title 28, Sec. 1915, U.S. Code, filed. (Prepared by the Deft.)

1957 Oct 31 MOTION of DEFENDANT to vacate sentence pursuant to Title 28, Sec. 2255, U. S. Code - DENIED. Motion, files and records of the case conclusively shows that the petitioner is entitled to no relief. YOUNGDAHL, J. (N)

Nov 15 AFFIDAVIT in support of application to proceed on appeal - Denial of motion of 10-31-57 without prepayment of costs, filed. Cert. of Serv. (Prepared by deft.)

Nov 25 ORDER dated 11-22-57 appointing Bruce R. Harrison as counsel to defend, under provisions of Criminal Local Rule 92-A, filed. YOUNGDAHL, J. (N)

143 1958 Jan 15 MEMORANDUM pursuant to Rule 92-A in support of Deft's. application to proceed on Appeal without prepayment of costs, filed. Cert. of Serv.

Jan 27 Application of Deft. for leave to appeal- Denial of motion of 10-31-57 without prepayment of cost, GRANTED. YOUNGDAHL, J.

NOTICE OF APPEAL, FILED.

Feb 24 DESIGNATION OF RECORD ON APPEAL, filed.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

[Filed Nov. 15, 1955]

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Washington, D. C.,

Wednesday, September 14, 1955.

The above-entitled cause came on for trial before Honorable LUTHER W. YOUNGDAHL, a judge in the United States District Court, and a jury, at 10:00 a. m.

APPEARANCES:

For the Government:

JOEL D. BLACKWELL, Esq.,
Assistant United States Attorney

For the Defendant:

JOHN D. FAUNTLEROY, Esq.

PROCEEDINGS

(After the empaneling of a jury and opening statement by the Assistant United States Attorney, the following occurred:)

Thereupon,

BARBARA LOUISE SPRIGGS

was called as a witness on behalf of the Government and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q. State your full name, please. A. Barbara Louise Spriggs.

* * *

MR. FAUNTLEROY: Pardon me, Your Honor. The defendant here is a little hard of hearing. With the permission of The Court, I wonder could we move to this next table?

THE COURT: Surely.

BY MR. BLACKWELL:

* * *

Q. Where were you living on June 18, last year? A. 1211 - 18th Street, Northeast.

Q. Now, is 1211 - 18th Street, Northeast, here in the District of Columbia? A. Yes.

Q. Do you know the defendant in this case, Charles H. Plummer, Jr.? A. Yes.

Q. How long have you known him, approximately? A. About a year and a half, now.

Q. Directing your attention to June 18 of last year, were you home during the early evening? A. Yes.

Q. What time did you have dinner? A. It is usually around 4:30, but this evening it was later.

Q. You will have to keep your voice up, madam. A. It is usually around 4:30.

Q. What time did you have dinner on June 18 of last year?

A. About 8:30 or a quarter to 9:00.

Q. Where did you live in this particular home? Did you have the

entire house or did you live in a certain section? A. On 18th Street?

Q. Yes. Where did you live, what section of the building. A. I had two rooms on the second floor in the rear and I shared the bath, and my kitchen was in the basement.

Q. All right, now, directing your attention to this particular evening, June 18, did there come a time -- I would like to inquire -- when you left your apartment to go to the kitchen to prepare your dinner? A. Yes.

Q. What time was that, approximately? A. About 8:15 p.m.

Q. Now, are you the mother of one Maria N. Simpson? A. Yes.

Q. How old was she on June 18 of last year? A. Eleven months old.

Q. Do you have any other children? A. Yes.

Q. How old are they? A. Six years, five years, three years, two years, and four months.

Q. Just a moment, how many do you have? A. Five.

Q. Well, now, how many children did you have living with you at this particular address on June 18? A. Three.

Q. Well, what were the ages of the three living with you -- the two other than Maria living with you at that time, their ages at that time? A. Four years and two years.

Q. What were their names? A. Thomas Spriggs, four years; and Sharon Spriggs, two years.

Q. Now, on this particular evening when you went downstairs to prepare your dinner, did you take any of the children with you? A. Yes.

Q. Which ones did you take, or which one? A. Thomas and Sharon.

Q. What did you do with Maria? A. I left her in the bed asleep.

Q. Did you observe her condition prior to your leaving. A. Yes.

Q. What was her condition? A. She was in the bed with her polo shirt, under shirt, and her diaper on.

Q. Polo shirt, under shirt, and diaper; did you say? A. Yes.

Q. Was she awake or was she asleep? A. She was asleep.

Q. Now, how long did you remain downstairs in the kitchen; do you recall, approximately? A. About an hour.

Q. When you went to the basement did you leave anyone in your apartment? A. No.

Q. Other than Maria? A. No.

Q. Did you see the defendant when you proceeded to the basement kitchen? A. No.

Q. Now, there came a time when you came back upstairs after dinner; is that correct? A. That is right.

Q. Was Maria there then? A. Yes.

Q. Was she in the same condition she was when you left about an hour before? A. No.

Q. Was there anything unusual about her at that time? A. Yes.

Q. Now, will you describe to His Honor and these ladies and gentlemen of the jury just what of an unusual nature there was about Maria upon your return from your dinner? A. When I came back I found her in the bed completely naked.

Q. Please keep your voice up, Mrs. Spriggs. A. I found her in the bed completely naked and she was bleeding from her vagina and there was blood all over the bed.

Q. Was anyone in the room? A. No.

Q. What was the condition of the apartment? Was it dark or was it light? A. It was light.

Q. What was the condition when you left? A. The lights were out.

Q. Now, did you see anyone in the vicinity of the apartment at that time after you discovered her in this unusual condition? A. I saw Mr. Plummer in the bathroom.

Q. Now, you say Mr. Plummer; are you referring to the defendant in this case, Charles H. Plummer? A. Yes.

Q. What was Mr. Plummer doing in the bathroom, if you know? A. Washing his hands.

Q. Did you have a conversation with him at that time? A. Yes.

Q. What was the nature of that conversation? A. I asked him what had happened to the baby and he told me he didn't know, that he had picked the baby up and he had gotten blood all over his shirt.

Q. Did he make any further statement? A. No. I asked him what had happened to the baby. He didn't answer me.

Q. You say he did not answer you? A. No.

Q. Did you ask him whether or not after he found the baby in this condition whether he called you or not? A. Later he told me --

Q. Or called anyone? A. Later he told the detective that he had called me but I didn't hear.

Q. All right, now, after finding the baby in this condition, Mrs. Spriggs, what did you do if anything? A. I took her to D. C. General Hospital.

Q. What did they do there? Did they treat the baby there? A. They just told me that she would be all right and sent me back home. They asked me if any little boys had been playing with her because she had --

Q. I don't think you need tell us about the conversation you had there, but I believe it is your testimony that they treated the baby and returned the baby home? A. Yes.

Q. What did you do next? A. I talked to my landlady.

Q. Well, now, don't tell us what you said to your landlady and what your landlady said to you, but as a result of your conversation with your landlady did you do anything and if so what? A. I took her to Children's Hospital.

Q. Was she treated at Children's Hospital? A. No.

* * *

Q. As a result of that -- they didn't treat her at the Children's Hospital -- what did you do then? A. Took her back to D. C. General and talked to the policeman on duty, as I was advised, and he called the sex squad detectives.

Q. Did there come a time when the members of the sex squad or

some member of the sex squad came to your apartment at 1211 18th Street? A. Yes.

Q. Was the defendant there then? A. Yes.

* * *

Q. Did you hear the members of the sex squad question the defendant? A. Yes.

Q. What did they say to the defendant? A. They asked him what had happened to the baby, why he had blood on his shirt, and I don't remember what else.

Q. Well, what did the defendant say? A. He said that he had just picked the baby up, that he had gotten blood all over his shirt, and she was bleeding when he went in the room, and he didn't know what had happened to her.

* * *

12 CROSS EXAMINATION

BY MR. FAUNTLEROY:

Q. Now, Mrs. Spriggs, I think you said you had known Charles Plummer for about a year and a half; that is correct, isn't it? A. Yes.

Q. And the offense took place on June 18, I believe, 1954. A. Yes.

Q. Now, how long had you known Charles Plummer prior to June 18, 1954? A. About two months.

Q. Now, will you tell us, please, just what relationship was between you and Charles Plummer? A. He was my boy friend.

Q. Now, being your boy friend, did he stay with you at night? A. Sometimes.

* * *

13 Q. Did there come a time when you and Charles Plummer began living together, sharing the same bed and living in the same apartment? A. Yes.

Q. When was that? A. About a month before.

Q. Before this occurred? A. Before this happened, yes.

Q. And will you tell the members of the jury just how Charles Plummer treated your children? I think you had three children at that

time. A. Yes. He treated them like a father would. He didn't mistreat them, as far as I knew anything about it.

Q. As a matter of fact, he was very kind to them; was he not? A. Yes.

Q. Now, in this month prior to the happening of this unfortunate incident when you were living with Charles Plummer, you had a satisfactory sexual relation with him; is that correct? A. Yes.

Q. Now, there came a time when you went downstairs and you left little Maria upstairs, the eleven-month old child. Will you tell us,

14 please, who was on the first floor? A. My landlord, Mr. Lattner, his wife, and three of their friends, the two Richardson brothers and one of their wives.

Q. Now, did you stop to talk with them at this time when you went down to the kitchen? A. No.

Q. Did you see Charles Plummer there at that time? A. No.

Q. Now, will you tell us just what the Lattners were doing at that time? A. They were playing records and drinking.

Q. What were they drinking? A. I don't know. I know they were drinking beer.

Q. And they were playing records? A. Yes.

Q. In other words, they were having sort of a little party in this room; is that correct? A. Yes, I guess so.

Q. And will you tell us just about what time of day this party started? A. I don't know what time it started, but I got there at about 8:15 and they were there then.

Q. Now, you were there earlier in the day; is that correct?

15 A. Yes, I was there before dinner. I had gone out to the store at about 6:30 or so, I believe.

Q. Now, at that time they were still having a party there, weren't they? A. No, not when I left they weren't?

Q. They had earlier that afternoon? A. I don't recall.

Q. In other words, you really don't remember? A. Not before -- not before, I don't remember earlier.

Q. Now, when you were up on the second floor attending to your little Maria could you hear the music? A. Yes.

Q. In other words, it was pretty loud, wasn't it? A. Well, not necessarily because the room where the thing was was directly under my bedroom and therefore it made it easier for me to hear the music.

Q. You are not keeping your voice up. I wonder would you, Mrs. Spriggs, be kind enough to draw us a diagram on this board of just the position of your room that you occupied in your apartment? A. All right.

MR. BLACKWELL: If she is able to draw it.

MR. FAUNTLEROY: Just a rough sketch. We won't ask for anything special.

(Witness withdrew from stand.)

* * *

16 THE COURT: Show it to her and if she agrees it is correct, you can draw it.

THE WITNESS: I can't draw that.

MR. FAUNTLEROY: You can't draw it like that? Maybe I can help you. I am not an expert drawer. If Your Honor wants me to do it, she has acknowledged that this is the exact diagram of the house.

MR. BLACKWELL: That being correct, Your Honor, I don't object to the defense counsel placing it on the board.

(Mr. Fauntleroy, defense counsel, drew diagram on blackboard.)

17 BY MR. FAUNTLEROY:

Q. This is the front of the house here (indicating). Would you say this (indicating) is Mr. Lattner's bedroom? A. Yes.

Q. And this (indicating) would be the toilet; is that correct? A. Yes.

Q. And this (indicating) is sort of a stairway coming up to the second floor; is that right? A. Yes.

Q. Now, this (indicating) is sort of a bedroom here. Whose room is this? A. A spare room.

Q. Now, this (indicating) is sort of a back porch. Did anybody occupy this? A. No, it wasn't a room.

Q. Now, will you describe whose room this (indicating) was? A. That was my bedroom.

Q. And how about this room (indicating)? A. That was the living room.

Q. Now, in which room did you have little Maria? A. In the bedroom.

Q. Now, if you would like to, you may use this pointer.

THE COURT: She isn't talking loud enough for the jury to hear.

18 If you don't need her any more there, you had better put her on the stand.

MR. FAUNTLEROY: All right, Your Honor, if you prefer her on the stand.

THE COURT: It is a little easier for the jury.

(Witness resumed stand.)

BY MR. FAUNTLEROY:

Q. Which room was it that you had little Maria in? A. She was in the bedroom.

Q. When you say the bedroom, that is this room here (indicating)? A. Yes.

Q. And on the first floor, the room where the party was going on was directly under this room (indicating); is that correct? A. That is right.

Q. And you could hear the phonograph playing all the time? A. Yes.

Q. Now, when you went downstairs to go to the kitchen you left little Maria in the bedroom; is that right? A. That is right.

Q. Now, will you tell us just where the kitchen is in the house that you went to to prepare the dinner? A. It is in the basement.

19 Q. Now, could you tell us approximately under what room on the second floor would the kitchen in the basement be located? A. It was under my bedroom and the living room.

Q. Under your bedroom? A. And the living room.

Q. And the living room. In other words, it would be in the basement under these two rooms (indicating); is that right? A. That is right.

Q. Did you hear, Mrs. Spriggs, the defendant here call you? A. No, I didn't.

Q. When you were down in the kitchen could you hear the music playing? A. Yes.

Q. Now, tell me this: When the policemen came to examine Charles Plummer, did they examine anybody else or did they question anybody else with reference to what had happened? A. No.

Q. Now, actually, the fact that you were in the basement and you were cooking dinner and there was a sort of party going on on the first floor, you couldn't have heard Charles Plummer if he had called you anyway, could you? A. No.

20 MR. FAUNTLEROY: That is all, Your Honor.

* * *

DOYLE G. LATTNER

was called as a witness on behalf of the Government and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q. State your full name, please, sir. A. Doyle G. Lattner.

Q. Where do you live? A. 1211- 18th Street, Northeast.

Q. Were you living at 1211 - 18th Street, Northeast, on the 18th of June of last year? A. I were, sir.

Q. Do you know the defendant, Charles H. Plummer, Jr.? A. I do, sir.

Q. How long have you known him? A. Well, just I would say a couple of months before this 18th.

21 Q. Do you know Mrs. Spriggs, Mrs. Barbara L. Spriggs? A. I do, sir.

Q. Was she a tenant of yours on June 18 of last year? A. She was, sir.

Q. What section of the house did she occupy, sir? A. She occupied upstairs, apartment two, upstairs, and a kitchen downstairs in the basement.

Q. Directing your attention to June 18 of last year, did you have occasion to see the defendant in your home on that particular evening? A. I did, sir.

Q. About what time did you see him there or did he come there, sir? A. Well, somewhere between I would say 7:30 and 8:00 o'clock, 8:15, or something like that.

Q. Where were you at the time of his coming? A. I was on the first floor.

Q. What were you doing if anything? A. Well, I had some friends visiting and we was having a few beers and sitting around.

Q. Do you remember when the defendant came to your home? A. I do, sir.

Q. How do you remember? A. Well, I was there in the kitchen as he came to the door and I invited him back to have a beer, so he did.

Q. Now, where did this drinking of the beer take place, in the kitchen or what part? A. No, right in the porch room, in the television room, where I have kind of a den right back from the living room, and we were sitting back there.

Q. Well, now, did the defendant ring a bell when he came to your home? A. When he came to the door I was there in the kitchen. When he came to the door I asked him to come on back.

Q. Well, he did come back? A. Sure.

Q. Well, now, did anyone else come after the defendant came to your home in the next hour or so? A. No one.

Q. What did the defendant do upon his arrival at your home this particular evening? A. Well, he came on back and had a beer or so, and then afterward went on upstairs.

Q. Did what? A. After he had the beer or so, he went on upstairs.

Q. Well, now, when he went upstairs where was Mrs. Spriggs, if you know? A. She and the two children, the older children, were getting

dinner in the basement in her kitchen.

23 Q. Did you see her when she went to the basement? A. I did.

Q. And about how long after Mrs. Spriggs had gone to the basement was it before the defendant went upstairs? A. Well, it was a matter of just I would say about 20 minutes. He just drank some beer. He didn't stay any longer. He just went on upstairs.

Q. Do you recall when Mrs. Spriggs left the basement and went back upstairs? A. Well, yes, it was approximately 40 minutes after he had went up there.

Q. Did I understand you correctly to say that Mrs. Spriggs went upstairs approximately 40 minutes after the defendant had gone up? A. Sure.

Q. Now, during the time the defendant was -- after the defendant went upstairs, did there come a time when he returned to your place to your television room prior to the time Mrs. Spriggs went upstairs? A. You say did he return?

Q. Before she went up? A. No, he did not.

Q. Now, did anyone else come in from the time the defendant went upstairs until the time Mrs. Spriggs -- A. No one, no one.

24 Q. Had anyone come in would you have seen him? A. Oh, sure, definitely.

THE COURT: Did I understand you to say you had some friends there with you?

THE WITNESS: They was already there, yes.

THE COURT: Did they continue to stay there?

THE WITNESS: Yes, sir, they was there.

THE COURT: How many were there?

THE WITNESS: Just two brothers and one of their wives.

THE COURT: What was that?

THE WITNESS: Two brothers.

THE COURT: Three altogether.

THE WITNESS: Yes.

THE COURT: They stayed right with you the whole time when the defendant went upstairs?

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

BY MR. BLACKWELL:

Q. Now, did these guests of yours, these three people you mentioned, leave the room any time after the defendant left? A. They did not, sir.

Q. Did they leave any time after you saw Mrs. Spriggs go down to the kitchen until the time she returned? A. They did not, sir.

25 Q. After the defendant went upstairs did you hear him call Mrs. Spriggs? A. No, sir.

Q. Had he called Mrs. Spriggs or anyone, would you have heard him? A. Yes, sir, certainly.

Q. Why would you have heard him? What was your position with respect to the room upstairs? A. Well, see, at the top of the steps, you see, in other words, where we were sitting was right up over where he was at in her apartment, but we was right under there. He would have had to call from the top of the steps where it would have been right next to the living room where we were sitting at, and nothing in the world would have kept us from hearing.

Q. You were there from the time Mrs. Spriggs went down until the time she returned? A. I was.

* * *

CROSS EXAMINATION

BY MR. FAUNTLEROY:

Q. You were the landlord of the premises where Mrs. Spriggs lived on June 18, 1954? A. Yes, sir.

26 Q. Would you say that that rough sketch on the board there is a reasonable facsimile of the arrangement of your house?

THE COURT: There seems to be no dispute about it. I wonder if it is conceded that it is? There seems to be no dispute about it.

MR. BLACKWELL: If Your Honor please, now, the defendant has drawn it and Mrs. Spriggs is of the opinion that it reasonably is, however I think this landlord would be in a better position to definitely state.

THE COURT: Well, if he is disputing it, go ahead.

THE WITNESS: That is a pretty good description of it. It looks pretty good, but there is only one thing back here where it says at the top, "bath."

MR. FAUNTLEROY: Right here (indicating); that is "bed."

THE COURT: Bedroom.

MR. FAUNTLEROY: I suppose that she is referring to that as being her bedroom upstairs.

MR. BLACKWELL: That is right.

THE WITNESS: Well, that is a drawing of the upstairs, then?

MR. FAUNTLEROY: This is the second floor.

THE WITNESS: That is the second floor. Oh, yes, well, that is
27 right for the second floor.

MR. FAUNTLEROY: I wonder would you mind stepping down and drawing a first floor plan of your house?

THE COURT: We will take a recess while we are doing that.

* * *

BY MR. FAUNTLEROY:

Q. Now, Mr. Lattner, this small diagram is a floor plan of the first floor of your house; is that correct? A. It is, sir.

Q. And will you tell the Court and members of the jury just where your friends were drinking? A. Right there where it says, "TV" in the TV room.

* * *

28 Q. Now, will you tell us just where you were sitting? A. Well, I was sitting somewhere along here (indicating). I was sitting right along there (indicating).

Q. Will you explain where the other two gentlemen, the Richardson brothers, were sitting? A. I have a sofa bed runs right alongside the wall right across here (indicating).

Q. And they were sitting there; is that correct? A. That is right.

Q. And where were you sitting? A. I was sitting right here on a chair right here (indicating).

Q. And from time to time you would have to get up in order to serve beer; is that right? A. Oh, yes.

Q. And where would you go to get this beer? A. Right here (indicating), right in this little door here to the porch. I have a refrigerator on that porch, on that little porch.

29 Q. And also from time to time you would have to get up and change these records you were playing; is that right? A. Oh, yes, once in awhile.

Q. All right, that is all. You may return to the stand.

(Witness resumes witness stand.)

Now, on June 18, 1954, Charles Plummer came into the house? A. Yes.

Q. And you invited him back to your TV room where you were having a party? A. Surely.

Q. Then when he said he was going upstairs, of course you didn't question it? A. No.

Q. Because he had been living upstairs? A. That is right, he had been there all along.

Q. Now, will you tell us just about when this little party of yours started? A. Well, not too long because the Richardson brothers and I -- we all work together and we had worked that day and they came in and we don't get off until 4:30, and they had been home and came back to my house since we got off from work, and that happened around 8:00 o'clock so I guess we had been around there about an hour -- 40 minutes, a hour,

30 or something like that.

Q. Did you hear the defendant call down that something had happened upstairs? A. I did not, sir.

Q. You did not hear? A. I didn't hear.

Q. Do you remember when Mrs. Spriggs came downstairs? A. I do.

Q. Did she stop in to have a beer with you? A. No, she went right on downstairs, she and the two children.

Q. Did she have any conversation with the group that was in your TV room? A. Not at all. She just went right on down.

Q. Tell me, Mr. Lattner, when Mrs. Spriggs came downstairs, how did you happen to see her? A. I happened to be seated into the door, you see. There is a door leading from each room, see, and right where it says, "kitchen" there, you see, the steps goes down to her kitchen, out of my kitchen right down under these stairs. And at the time she and the children came down, I happened to be -- I don't know whether I got up to get a glass or another beer at the box or what, but I do recall her going down.

MR. FAUNTLEROY: That is all, Your Honor.

(Witness withdrew from stand.)

31 * * *

DOCTOR GEORGE HAJJAR

was called as a witness on behalf of the Government and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q. State your name and occupation, please. A. I am George Hajjar, internist physician at D. C. General Hospital.

Q. Doctor, do you have with you the record of the examination of one Maria N. Simpson, 11 months of age on the 18th day of June, 1954? A. Yes, sir, I do.

Q. Were those records brought in response to a subpoena issued from this court? A. Yes, sir, they are.

Q. Are those records kept in the regular course of business? A. Yes, sir.

MR. BLACKWELL: If Your Honor please, I understand defense

32 counsel waives the questions and is ready to concede the authenticity of these records.

MR. FAUNTLEROY: That is right, Your Honor.

THE COURT: Very well.

BY MR. BLACKWELL:

Q. Will you read from the record the result of the examination of Maria N. Simpson?

THE COURT: You had better offer them in evidence and have them received before he reads them.

MR. BLACKWELL: Your Honor, at this time the Government wishes to request that these be marked as Government's Exhibit Number 1 for identification.

(D. C. General Hospital record of examination of Maria N. Simpson was marked Government's Exhibit No. 1 for identification)

THE COURT: And you are offering it in evidence at this time?

MR. BLACKWELL: I wish to [go] over the record.

THE COURT: Any objection:

MR. FAUNTLEROY: No objection.

THE COURT: Received.

(D. C. General Hospital record of examination of Maria N. Simpson, previously marked Government's Exhibit No. 1 for identification, was received in evidence.)

33 BY MR. BLACKWELL:

Q. Doctor, will you be so kind as to read from that record to the members of the jury the results of the examination of Maria N. Simpson on the date in question? A. Yes, sir. A physical examination was done on the 18th of June, 1954, at 10:45 p.m. at the District of Columbia General Hospital. The purpose of the examination was to determine injuries to this Maria Simpson and, if possible, the cause of same. The physical examination in general was within normal limits except for examination of the vaginal area of the child. The examination of the vagina showed fresh vaginal bleeding, and interior examination revealed a laceration of the posterior wall of the vagina.

THE COURT: Would you speak up a little louder?

BY MR. BLACKWELL:

Q. Will you read that once again about what you found, sir, a little louder please, Doctor Hajjar? A. The general physical examination was normal except for examination of the vagina, which revealed a laceration on the posterior wall of the vagina.

THE COURT: And fresh bleeding.

THE WITNESS: And fresh vaginal bleeding.

MR. BLACKWELL: May we approach the bench, Your Honor?

34 (At the bench:)

MR. BLACKWELL: I take it that this doctor is probably not qualified to testify as to the cause of this. It would be purely speculative.

THE COURT: I would think so.

MR. BLACKWELL: I shall not pursue the examination.

THE COURT: I would think so.

MR. FAUNTLEROY: I thought we were going to stipulate to that record, the whole record being introduced.

MR. BLACKWELL: What else do you want?

THE COURT: Does the record show something else?

MR. FAUNTLEROY: It is all in evidence?

THE COURT: Yes, the whole report is in evidence. Which part do you have in mind?

MR. FAUNTLEROY: The whole part, "cause undetermined."

MR. BLACKWELL: Very well, I will bring that out.

(In open court:)

BY MR. BLACKWELL:

Q. Doctor, does your record state any cause of this laceration of the vagina? A. According to our record, the impression at the time of the examination was that this was a laceration of the vaginal wall, cause undetermined.

MR. BLACKWELL: Thank you, Doctor. You may inquire.

35 MR. FAUNTLEROY: I have no questions, Your Honor.

THE COURT: You may be excused, Doctor.

* * *

WALTER E. GROVE

was called as a witness on behalf of the Government and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q. State your full name and assignment, Sergeant, please.

A. Walter E. Grove, detective sergeant, assigned to the detective bureau of the general assignment squad, Metropolitan Police.

Q. Now, directing your attention to June 18 of last year, Sergeant, to which squad were you assigned? A. To the sex squad of the detective bureau.

Q. On that particular day, that is June 18, did you have occasion to see the defendant, Charles H. Plummer? A. I believe it was the morning of the 19th that I first saw the defendant.

Q. Very well. And how did you come to see the defendant?

A. About 3:00 a.m. on the 19th I was called to the D. C. General

36 Hospital to investigate a case and found Mrs. Simpson and her daughter there and started the case from that point.

Q. Did there come a time when you had occasion to question the defendant relative to the condition of one Maria N. Simpson, 11 months old? A. I did.

Q. When and where was that? A. That was at the home of Mrs. Spriggs -- I believe I previously said "Simpson," which was the child's name -- the home of Mrs. Spriggs at the 1100 block of 18th Street, Northeast -- I am sorry, may I correct that, the 1200 block -- 1211 18th Street, Northeast.

Q. Will you tell His Honor and the members of the jury what you said to the defendant and just what the defendant said to you concerning the condition of the Simpson girl? A. After interviewing Mrs. Spriggs again at her home and Mr. and Mrs. Lattner, who had the house at the 18th Street address and with whom Mrs. Spriggs lived, and questioning them as to the different things that happened during the evening and in the early morning hours of the 19th, I then had the defendant Plummer

brought down to the living room of the Lattner part of the house on the first floor and I talked with him to some length, asking what time he

37 arrived at the house. He told me he did not know the exact time. And as to his actions and as to where he went when he came in, he said that he had stopped at the Lattners for a few minutes and as near as he could come to time on that, I believe it was 10 or 15 minutes, he said.

And then he had gone to the second floor and he did not find Mrs. Spriggs there but that he had been drinking beer and he thought he would lay down upstairs and wait for her. I don't know that he mentioned he knew where Mrs. Spriggs was in the house, but he said that he was waiting for her.

I then asked him as to the condition of the second floor bedroom as to the lighting. He stated he did not know whether the light was on. And as to the door, he said he didn't know whether it was open or closed, Mrs. Spriggs' bedroom.

And that after a time he found that she was not there in the room. And I think the next statement he made was that he had picked up the baby and called her -- called for her.

I questioned further on those points that I have already given and some others, and he as to the light he then said that he thought the light was off and the door closed when he got there. As to what the child was clothed in when he picked it up, he said he didn't remember.

I went back to a point where the complainant had advised us that

38 the --

Q. Just a moment, was the defendant present when this occurred?

THE COURT: I assume he is telling now about what the complainant said; is that what you are saying?

THE WITNESS: Your Honor, the defendant was in --

THE COURT: The question is what you are testifying to now is what you were telling the defendant as to what the complainant said?

THE WITNESS: That is correct.

THE COURT: Go ahead.

THE WITNESS: The complainant had advised me that when she first met the defendant up at the second floor hallway that he was washing his hands and that he had said to her --

MR. BLACKWELL: Keep your voice up, please.

THE COURT: Is that what you were telling him, now?

THE WITNESS: That is right.

THE COURT: All right.

THE WITNESS: That he had said to her, "I called you when I found the baby like this." And she had said and later said that she received no call from him.

At that time I also checked to see if Mr. and Mrs. Lattner, who were also still present there during most of the questioning in their
39 living room, if they had heard --

MR. BLACKWELL:

Q. Now, the defendant was present at that time? A. That is correct -- if they had heard of the defendant calling for Mrs. Spriggs and they said they had not.

At a later time the defendant told us that he did not call down, and changed his story to that effect.

I talked with him further on the removal of clothing from the baby. He said first he did not know what the baby had on, whether it was naked or had clothing, but later in the interrogation, conversation, he stated that he had removed two safety pins -- I should say he removed safety pins. I don't know as he said two. There were two that were on there originally, as to the complainant's story. One of the pins was found in the bed and one on a dresser beside the bed.

He said he had also removed a T-shirt and a diaper from the child because they had blood on them. I asked the defendant if he had gotten any blood on him and he said only on his jacket or sweater.

I questioned the defendant later at police headquarters, sending him to the central cell block at about 5:00 a.m. the same morning.

At about 6:00 o'clock I went to the cell block, brought him up to the identification bureau and asked him if he would submit to a test for

blood on his clothing and on his person, and he said that he wouldn't.

40 The test was made in my presence, and after the conclusion of the test I asked him questions as to results of that test or what showed from the results of that test. One question I put to him was how blood was found on his hand and fingers. He stated that he didn't know. I reminded him that he previously had told me that he didn't get blood on his hands.

And a test was also made as to the defendant's penis and I asked him regarding that and he stated that he had had relations with Mrs. Spriggs several days before and that is how he accounted for it, if it were there.

Subsequently I turned the defendant over to other members of the sex squad and there was a detective assigned, and I had previously notified the complainant, Mrs. Spriggs, to be in the office for a statement in the morning.

MR. BLACKWELL: Thank you, Sergeant.

THE COURT: Was there an examination made of the penis?

THE WITNESS: Yes, sir.

THE COURT: What was the result?

THE WITNESS: I could not --

THE COURT: You are not familiar with that?

THE WITNESS: I know that there was a certain amount found.

41 THE COURT: Do you know of your own knowledge about that? I don't want you to testify otherwise.

THE WITNESS: No.

THE COURT: Well, then, I am not going to ask you.

MR. BLACKWELL: We do have the officer here.

THE COURT: Very well.

CROSS EXAMINATION

BY MR. FAUNTLEROY:

Q. Sergeant, do you remember when you questioned Charles Plummer about what had happened -- don't you recall him saying that the child had started crying and he had picked the baby up? A. He

possibly might have answered in that way during some of the questioning.

Q. He further indicated to you, if your recollection will recall, that that was the reason that he had the blood on his hands and his jacket? A. As to the jacket, yes. He gave me no reason as to how it was on his hands.

Q. But he indicated that he had picked the little child up; isn't that right? A. He did, yes.

Q. And when you took him down to headquarters to ask him whether he would submit to this blood test, he didn't make any objection, did he? He volunteered? A. No, he did not. He made no objection.

42

* * *

JAMES T. MILLER

was called as a witness on behalf of the Government and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q. State your full name and assignment, Officer, please.

A. Private James T. Miller. I am assigned to the identification bureau of the Metropolitan Police Department.

Q. Were you so assigned on June 18 of last year? A. Yes, sir, I was.

Q. Now, Officer, what were your duties in connection with the identification bureau? What did they consist of? A. Well, I fingerprint prisoners and photograph them. I develop photographs. I take them. I run preliminary blood tests to determine the presence of blood. And I examine questioned documents with the idea of determining who the writer was, or if there have been forgeries or whatever in writings.

43

Q. Now, as to a preliminary blood test, have you had occasion to testify in court on previous occasions relative to preliminary blood tests for the purpose of determining the presence of blood on a person or object? A. Yes, sir, I have.

MR. BLACKWELL: Do you concede the officer's qualification, Mr. Fauntleroy?

MR. FAUNTLEROY: Examine him further.

MR. BLACKWELL: Very well, I will proceed.

BY MR. BLACKWELL:

Q. In which courts have you testified? A. I testified in the Ira Wilson case before Judge Kronheim. That was in May of 1954.

Q. What preparation have you had in this connection with preliminary examinations of blood? A. Actually, in the line of chemistry, I have only studied high school chemistry. I have never had college chemistry. The tests that we run are prepared by Lieutenant Bohannon, who is a chemist for the Police Department. He prepares these blood tests by giving all the reagents that are necessary, measured out in appropriate amounts and set up in capsules. And each of the blood tests is prepared from these pre-measured reagents that have been set up by this chemist.

All that we do is to measure out or take these capsules according
44 to directions, mix them with the proper solvent, and conduct the tests. And only to note -- our only duty actually would be then to note the reactions that these tests give.

We actually have nothing to do with the measuring out or the compounding of any of these tests. They are all standard tests and they are all set up by the chemist.

Q. What type of test would you use, sir. How many kinds do you have. A. Well, we just have three different tests. The most popular and most widely known is the benzidine test used for many years, and there are the malachite green test and the luminal test. These were developed out in the University of California by Doctor Kirk and his staff out in the Unversity of California and some of the other scientists who worked with him on several of these tests. They have been used for a number of years and have been widely used in various universities and subjected to very rigid tests to determine if there are any things that would work against these tests other than blood, and they have found

in that connection they give a positive reaction only to blood, that is the use of all three of these tests which we use together. There is no known substance or reagent of any kind that gives a positive test to all three of these tests that we have with the exception of blood.

45 MR. FAUNTLEROY: I was wondering if I couldn't ask him one preliminary question.

THE COURT: All right, go ahead.

BY MR. FAUNTLEROY:

Q. Officer, could you tell me whether or not you have had any formal training that would qualify you to analyze these blood tests?
A. I don't understand what you mean by "analyze these blood tests."

Q. Well, I understood from your statement that the chemist sets these tests up and you analyze them, the results of them. A. No, I said that the chemist had set up the tests. He measures out all the reagents that go into the tests, and these are packaged by him in small capsules. Those capsules are set up in certain amounts and all that I do, actually, is to put these pre-measured capsules in a certain amount of solvent, see that they are dissolved, and then to apply these things and to note the results.

Now, I don't analyze them in any way. I only note if a reaction occurs, and if the reaction does occur, that is indicative that there has been a positive reaction and it indicates the presence of blood. Other than that, I don't analyze them in any way.

Q. Now, you say if certain conditions exist then it is a positive

46 reaction. Someone told you, is that right, or you have been instructed as to that? A. Well, I have been instructed on that by Lieutenant Bohannon, yes, and by another officer named Singleton, who is also a chemist. But I have also read accounts of these various tests and how they are mixed, how they are set up, what the theory behind them is, and what reaction should occur, articles by Doctor Kirk and his staff out in California.

Q. And you say the extent of your educational field is you studied chemistry in high school? A. In the chemistry field alone. I have a degree but not in chemistry.

MR. FAUNTLEROY: May we approach the bench?

MR. BLACKWELL: May I ask this question before we approach the bench, Your Honor?

BY MR. BLACKWELL:

Q. There is also a form of chemical test known as phenol thaline?

A. Phenol thaline, yes, there is.

Q. Do you have occasion to use that in most of your analyses?

A. We have used that on occasion, yes.

(At the bench:)

MR. FAUNTLEROY: I don't like, Your Honor, to tie up a trial unnecessarily, but I am not satisfied --

47 THE COURT: I don't think he is qualified to give results either.

MR. BLACKWELL: He was just going to testify as to what he saw.

THE COURT: What do you mean what he saw?

MR. BLACKWELL: When this substance --

THE COURT: Unless you follow it up, it won't mean anything. It won't mean a thing to have him testify unless you can have the other officer.

MR. BLACKWELL: You mean the chemist?

THE COURT: One of these two officers who have been mentioned and who know about these tests or can tell about the conclusion. This man is not qualified to do it.

MR. BLACKWELL: I concede, Your Honor, that he hasn't had much experience.

THE COURT: He isn't qualified at all. He concedes that he isn't. You see, he cannot give the results of that test without being an expert and knowing about it. Where are these officers?

MR. BLACKWELL: Well, the only thing they can testify is they did fill the --

THE COURT: Well, from their expert knowledge they can testify as to what the results signify. That is what you are after.

48 MR. BLACKWELL: They were not present.

THE COURT: They do not have to be present. He can testify he saw red or whatever it is. He can testify the actual facts, but drawing conclusions from those facts requires expert knowledge.

MR. BLACKWELL: He can testify what he saw and then I will follow it up.

THE COURT: Well, yes, that is perfectly all right.

(In open court:)

BY MR. BLACKWELL:

Q. Did there come a time, Officer, when you had an occasion to run a preliminary blood test on defendant Charles H. Plummer? A. Yes, sir, there was.

Q. When and where was that? A. That was on June 19, 1954, at 7:45 in the evening in the identification bureau of the Metropolitan Police Department, 300 Indiana Avenue, Northwest, this city.

Q. Now, what if anything did your examination show as to the presence of blood? Strike that. What did your examination show, if anything, as to whether there was a positive reaction of blood from the defendant?

MR. FAUNTLEROY: I object to that, Your Honor.

THE COURT: I don't think he is qualified. That isn't what I

49 indicated to you at the bench. You can testify just what you saw without giving any conclusions about it.

BY MR. BLACKWELL:

Q. By the way, what type of examination did you administer to the defendant? A. I ran three different tests to indicate the presence of blood.

MR. FAUNTLEROY: I object to anything as to what it indicated.

THE COURT: I think that may stand. Go ahead.

THE WITNESS: And these three tests were the benzedine, luminal, and the malachite green test.

BY MR. BLACKWELL:

Q. What did you observe as a result of this test? Just what did you observe as a result of this test? A. In all --

MR. FAUNTLEROY: If Your Honor please, what the witness observed as a result of this test -- I still contend he would not be competent to testify.

THE COURT: He may state just what he observed in the making of the test. Go ahead.

THE WITNESS: There were three things that were examined in this test and they were each examined with three different sets of chemical reagents. In other words, they were subjected to three tests.

50 One was a yellow vest and on that vest there was a green reaction to the benzedine test, a green reaction to the malachite green test, and a fluorescence in the luminal test. Now, those are positive reactions.

The hands of Plummer were tested and there was a green test on the benzedine, green on the malachite green, and fluorescence on the luminal test, which indicates it is a positive reaction.

And the penis or the private parts of Plummer were examined and there was a green reaction on the benzedine test, which is the most sensitive of the three, and no reaction on the other two tests, which are less sensitive and which would have been a negative reaction.

BY MR. BLACKWELL:

Q. Which test was this last one? That was the negative on the luminal and malachite green and positive on the benzedine, a positive reaction on the penis of Plummer.

THE COURT: I assume you are going to follow it up, counsel, by these so-called experts' testimony as to what the green result signifies and the fluorescence result signifies?

MR. BLACKWELL: That is my intention.

THE COURT: This witness is not qualified for the results; only

51 what he actually saw.

MR. BLACKWELL: Very well, Your Honor. You may inquire.

CROSS EXAMINATION

BY MR. FAUNTLEROY:

Q. Do you have any notes of your examination? A. Yes, I have.

Q. May I see them?

(Witness hands notes to Mr. Fauntleroy.)

MR. FAUNTLEROY: That is all, Your Honor.

* * *

JOSEPH B. BOHANNAN

was called as a witness on behalf of the Government and, after being first duly sworn, was examined and testified as follows:

52 DIRECT EXAMINATION

BY MR. BLACKWELL:

Q. State your full name and assignment, Lieutenant, please.

A. Joseph B. Bohannan. I am in charge of the identification bureau.

Q. How long have you been in charge of the identification bureau, Lieutenant? A. About three years.

Q. What do your duties consist of as being in charge of that bureau?

A. Well, the supervision of all the activities that are performed there.

Q. What are some of the activities performed by that bureau?

A. It is a long list.

Q. I will ask you this: Does your bureau handle preliminary tests for the purpose of determining the positive reaction of blood? A. Yes, we do.

Q. Will you give us some information as to your scholastic background that qualifies you for your present duties? A. Well, I received a Bachelor of Science Degree from Georgetown University in 1939 and a Masters Degree in 1943. I have been running these blood tests for the

53 Police Department since 1943.

Q. About how many blood tests have you run during that time that you would be able to estimate? A. I haven't counted them.

Q. I mean on an average, a year or a month? A. Well, I guess the best way to explain the number of tests that are run is that on possibly one serious case we may run as many as 300 blood tests on one serious case alone. We run plenty of them. I personally have run thousands of them.

Q. Did you ever have occasion to testify in court showing the results or giving your opinion as to the results of these blood tests?

A. I am sorry, but I don't have the specific information here with me.

THE COURT: No, just whether you have at any time testified?

THE WITNESS: Yes, I have.

THE COURT: I think the foundation is sufficient.

MR. FAUNTLEROY: One question, Your Honor. He stated he had two degrees, one in 1939 --

THE COURT: In science, he said.

THE WITNESS: Master of Science, and I specialized in biological chemistry.

54 THE COURT: Go ahead. The foundation is sufficient.

BY MR. BLACKWELL:

Q. Now, in your bureau do you have one Private Miller working under you, Private James T. Miller? A. Yes, sir, he is a technician in my bureau.

Q. Are you acquainted with the various types of tests used to determine the positive reaction of blood on an object or on a person? A. I didn't quite get that.

Q. Are you acquainted -- A. Am I acquainted with them?

Q. Yes. A. Yes, sir.

Q. Now, Lieutenant, I would like to ask you in your bureau over there what is the process of running these tests? I mean is there any substance prepared in advance for the purpose of running the benzedine test? A. Yes, sir, there are various reagents used to make up the solution which is used to run the tests, using benzedine as one of the reagents.

Q. Is that also true in the malachite green? A. It is, yes.

Q. And luminal, also? A. Yes, sir.

Q. And do you supervise that preparation, sir? A. Yes, sir.

55 Q. All right, now, assuming that this substance which you prepare for the purpose of running the benzedine test, and the benzedine test is run on the hands, clothing, and the private parts or the penis of an individual, if that reaction, chemical reaction, was green what would be your opinion as to the presence of blood? A. That would be a positive reaction for blood.

Q. And would that also be true in the case of the other two tests, malachite green and luminal -- we will say in the case of malachite green, would the reaction be green? A. It develops a green color, yes, sir.

Q. And if that developed a green color, in your opinion, what would that be? A. That would again be a positive reaction for blood.

Q. All right, now, in the case of the test, the luminal test, if there is a reaction of fluorescence, what would be your opinion as to that? A. That would also be an indication of the presence of blood.

MR. BLACKWELL: Thank you very much, Officer. You may inquire.

MR. FAUNTLEROY: No questions, Your Honor.

* * *

56 HARVEY G. MATTINGLY

was called as a witness on behalf of the Government and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q. State your full name and assignment, Officer, please.

A. Detective Harvey G. Mattingly, attached to the sex squad, Metropolitan Police Department, Washington, D. C.

Q. Detective Mattingly, were you so attached to the sex squad on June 18 and 19 of last year? A. I was.

Q. Did there come a time when you had an occasion to talk to the defendant, Charles H. Plummer, Jr.? A. I did.

Q. When did you first have an opportunity to talk to Mr. Plummer? A. It was on the morning of June 19. I was working day work and when I came in the office Sergeant Grove turned this case over to me for further investigation.

Q. As a result of your conversation with the defendant, will you tell His Honor and these ladies and gentlemen of the jury what you said to him and what he said to you? A. I talked to the defendant about the alleged act on the child and he denied that he had touched the child in any

57 way. So I asked him how he accounted for this blood on his clothing and his hands and on his penis, and he said he had gone upstairs and saw the child laying in bed with the diaper off and bleeding down at the privates. So he picked the child up and looked at her and laid it back down and went in the bathroom and washed his hands.

I asked him why he didn't call the child's mother and first he said he did call her, but later on he said he didn't call her.

So then I asked him what did he do to the child and he said he didn't do nothing to her. I said, "Well, then, how do you account for blood on your penis?" Then he said he probably went in the bathroom and touched his penis while his hands were bloody.

MR. BLACKWELL: Thank you, Sergeant. You may inquire, sir.

CROSS EXAMINATION

BY MR. FAUNTLEROY:

Q. Officer, did you make notes of the conversation that you had with Charles Plummer? A. We got him in the jacket here, yes, sir, and also at the confrontation.

Q. Did you make notes at the time you had the conversation with Charles Plummer? A. Not in the note book.

58 Q. In other words, you went back to the headquarters and made notes? A. This was at headquarters when I talked to him, the sex squad office.

Q. How soon after you talked to him did you make these notes you are referring to? A. Well, while he was confronted I made certain notes as to what he replied. Later it was transcribed into the case report.

Q. Do you have notes, rough notes, that were made when you talked with Charles Plummer? A. No, I don't. I only make rough notes when I am on the scene of the crime. I don't make them in the office in my notebook.

Q. Well, now, the notes that you say you made when you talked with Charles Plummer at headquarters and then you said you subsequently transcribed them; is that right? A. That is right.

Q. Do you have those first set of notes? A. I wouldn't think so.

We usually throw them away when we write it up.

Q. Charles Plummer never admitted that he had molested this girl? A. He denied it all the way.

Q. And he also indicated to you that he had called the mother of
59 child when he found it in that condition, didn't he? A. That is correct. Then later when we had the complaining witness, Mr. Lattner, confront him and said he didn't hear him call, and he said he never did call.

Q. Lattner said he didn't hear him call? A. That is correct.

Q. Now, are you certain about this particular point? A. What is that?

Q. Are you certain about this particular point that you are testifying now? A. What point?

Q. You just got through testifying that Charles Plummer denied -- he changed his mind and said he hadn't called the mother? A. That is right.

Q. You are certain of that? A. That is correct.

Q. Are they in your notes that you have there? A. He said that he did not notify the child's mother of the apparent injury but went to the bathroom to wash himself. This last statement was made after it was called to his attention that no one else in the house heard him call down to the child's mother.

Q. In your routine questioning did you find out what the other
60 parties in the house were doing at that time? A. Yes, I did.

Q. And will you tell us just what they said? A. Who.

Q. Tell us what Lattner said he was doing at that time? A. If I remember correctly, I think Lattner was in the front room watching television. The mother of the child had gone down in the basement to prepare her supper.

Q. Now, let me refresh your memory just a little bit: Didn't Lattner tell you he was in the back room, the TV room, playing a phonograph record? A. If I remember correctly, he told me he was watching the television.

Q. Are you certain of that? A. No, I am not certain. I said if I remember correctly he told me he was watching television.

Q. In other words, you don't remember him telling you he was in the backroom playing the phonograph record? A. No, I don't.

MR. FAUNTLEROY: That is all.

* * *

61 MR. BLACKWELL: That being true, Your Honor, at this time the Government rests.

* * *

(At the bench:)

MR. FAUNTLEROY: Your Honor, at this time I would like to move for a directed verdict of acquittal on the basis, one that no crime has been proven to have been committed. There is no testimony here that the child had been sexually molested. The only evidence that is in the case is that blood was on the defendant. The body of the crime has not been proven.

THE COURT: Well, there is more than that. You overlooked part of the testimony, not only the blood, but the doctor in the hospital record said the vagina was torn; isn't that right?

MR. FAUNTLEROY: Bleeding.

THE COURT: And it was torn -- laceration of the posterior wall.

MR. FAUNTLEROY: But he also states cause undetermined.

THE COURT: Oh, yes, sure, they wouldn't know.

MR. FAUNTLEROY: I mean if the doctor --

THE COURT: They wouldn't know what the tearing came from. Of course not, they wouldn't. They couldn't tell.

62 MR. FAUNTLEROY: They could --

THE COURT: How could they tell?

MR. FAUNTLEROY: He could say whether it was in his opinion because of any internal bleeding that came on spontaneously.

THE COURT: I will deny your motion.

CHARLES H. PLUMMER,

the defendant, was called as a witness in his own behalf, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FAUNTLEROY:

Q. State your full name. A. Charles H. Plummer.

Q. Talk loud enough so the ladies and gentlemen of the jury can hear you. A. Charles H. Plummer.

Q. Now, directing your attention back to the day of June 18, 1954, you were living with one Barbara Spriggs at that time? A. I was.

Q. On 18th Street, that is correct, isn't it? A. That is right.

63 Q. Talk louder now. You have to keep your voice up. A. I was.

Q. Now, on that particular day, what time did you get home in the evening? A. I got in about 4:15.

Q. And now will you tell the members of the jury what you did from 4:15 on? A. Well, I came in and I went on upstairs. Barbara was laying across the bed, that is Mrs. Spriggs was laying across the bed. She looked awful funny. So I asked her what was wrong and she wouldn't tell me. So I went off back downstairs. I guessed what was wrong. I went off back downstairs and I had a conversation with Mr. Lattner and asked him what was wrong with Barbara, and he acted like he didn't want to tell me. So I asked him, I said, "Did you make another pass at her?" He told me to mind my business. He was drunk.

I told him if he didn't stop making passes at her I would let his wife know about it. He told me as long as we were in the house and we weren't married, he would continue to make them. That is what happened then..

Q. Now, did there come a time when you left the premises?
A. What?

Q. Did there come a time when you left the premises? A. Yes.

64 Q. When you left this house? A. Barbara and I and a friend of mine and two of the kids left. She went to the grocery store and the friend of mine and I stopped in a beer garden. We stayed there and she

came back and got keys from me and went on home. Well, I got back there about 8:30 and Lattner called me for a drink. So I figured he wanted to argue some more and I was just about ready to quit arguing, put up an argument. I walked on back. He had his friends in there and all were sitting in there drinking. He offered me a can of beer so I took it.

Then I stayed down there for about ten minutes and I went on upstairs. After I seen he wasn't going to argue, I went upstairs and laid down across the foot of the bed. When I went in, the lights were out and the child was crying. I didn't pay it any mind because I didn't know what for it was crying.

I laid down across the bed. She was crying in such a way that it was -- make you think something was wrong. I got on up and picked her up to try to pacify her, stop her from crying. She wouldn't stop so I went over and turned the lights on and I came back to the crib to try to find her bottle. That is when I saw the blood on it.

From then on I was just thinking about what the average person would be thinking -- get that blood off me before somebody thinks I did it.

65 Q. About how many beers had you had that day, including the one you had with Mr. Lattner? A. Yes, well, we had about two pitchers of beer between about four of us in the beer garden. The beer cost 50 cents a pitcher.

Q. Now, do you remember talking to Detective Mattingly, the officer who just preceded you on the stand? Do you remember having a conversation with him? A. Yes, I had a conversation with the detective.

Q. Mattingly, the one that preceded you on the stand? A. Yes.

Q. Do you remember having a conversation with him? A. Yes, I do.

Q. Now, do you remember what you told Detective Mattingly? A. Yes, I remember.

Q. Now, will you tell the ladies and gentlemen of the jury? A. He asked me did I commit the crime. I told him no. He asked me had I called the baby's mother. I told him yes I called her several times, but

I don't know whether she heard me or not.

Q. Did you at any time tell him -- change that? A. No.

66 Q. Now, so that these ladies and gentlemen of the jury might understand, did you sexually molest Barbara on the day in question, that is June 18? A. How is that?

Q. Did you sexually molest Barbara? A. No, it was the night before.

Q. No, maybe you don't understand.

MR. BLACKWELL: He answered the question.

THE COURT: You are asking about Barbara.

BY MR. FAUNTLEROY:

Q. Barbara is the little baby. A. No.

Q. Now, we will get back to Mrs. Spriggs.

THE COURT: Is Barbara the name of the little baby, or Maria?

MR. FAUNTLEROY: I am sorry.

THE COURT: You are asking about the mother, you see.

MR. FAUNTLEROY: Thank you, Your Honor.

BY MR. FAUNTLEROY:

Q. As to the little eleven-month old baby, did you attempt any sexual molestation of the little child? A. No.

Q. Did you fall asleep in the room? A. How is that?

67 Q. When you went up stairs, I think you testified that you lay down; is that right? A. Yes, I laid across the foot of the bed.

Q. Did you fall asleep or were you awake? A. Well, not exactly what you call asleep because the time when I came in the kid was crying. She was crying when I came in and so I laid down across the foot of the bed. The child, by her continuing to cry and the way she was crying, I just wakened up and I got right on up and picked her up.

Q. Now, will you explain to the Court and jury just how this blood -- it has been testified that you had some on your shirt and some on your hands -- how it got on you? A. Well, when I picked the child up from the crib, blood was all over, all over her body. I picked her up and held her against me and after I tried to stop her from crying, I couldn't stop

it so I put it back. Before I put it back, I tried to find where she was bleeding from. Then I put her back in the crib. That is how I got blood on my hands and on my clothes.

Q. Now, you have heard the testimony about blood on your penis? A. Yes.

Q. Did you examine your penis to find out whether there was any on it? A. No, I didn't but the officers did.

68 Q. After you put the baby back down and went into the bathroom, what did you do then? A. Well, after I put the baby back down, I called the baby's mother. I called her several times and then I went out into the hall and I called her. But after she didn't answer so I went on in the toilet and washed the blood on my hands because I didn't want to be running around with all the blood over me.

MR. FAUNTLEROY: That is all.

CROSS EXAMINATION

BY MR. BLACKWELL:

Q. Mr. Plummer, I believe you testified -- A. Would you mind speaking a little louder? I can't hear you.

Q. I believe you testified that you came home in the afternoon of June 18; is that correct? A. That is right.

Q. What time did you get home in the afternoon? A. I got home about 8:30.

Q. About 8:30 at night? A. At night. That was the second time.

Q. What time did you get home first in the afternoon? A. Oh, about 4:15.

Q. Now, when you came in you say you went upstairs and Mrs.

69 Spriggs was lying across the bed; is that correct? A. That is correct.

Q. And you inquired about what was the matter and she gave you no reply? A. That is right.

Q. Then you went back downstairs and you saw Mr. Lattner down there? A. That is right.

Q. And you asked him if he had made another pass at Mrs. Spriggs?

A. That is right.

Q. And I believe he stated that you are not married to her and "I will make a pass any time I see fit," is that correct? A. That is right.

Q. What did you say then? A. I told him if he didn't stop it I would let his wife know.

Q. Did you let his wife know? A. No, I didn't get a chance to let his wife know.

Q. What did you do? A. I went back upstairs and told Mrs. Spriggs she should move because I didn't want no trouble about the man.

Q. What did she say? A. She said she would.

70 Q. And what did you do then? A. Well, I was a little aroused so my friend came up there.

Q. Who was this friend? A. His name was David Higgins.

Q. David Higgins? A. David Higgins.

Q. Where does he live? A. He lives on Miegs Place, Northeast.

Q. What is the address? A. I don't know his address.

Q. Is he here today? A. No, he isn't here today.

Q. What did you and your friend, David Higgins, do? A. Him, I, Barbara, and the two kids went on out.

Q. Where did you go? A. She went to the grocery store and I went in the beer garden.

Q. How long did you remain at the beer garden? A. I been in the beer garden up until about 8:25.

Q. Then what did you do? You came back to 1211 18th Street? A. Was I living there?

Q. You came back from the beer garden? A. Yes, I came back from the beer garden.

71 Q. Did David Higgins return with you? A. Yes, he walked up to the door and then he turned around and went on back.

Q. How many beers did you have in the beer garden? A. About two pitchers. Two pitchers and one can, which I would rate about five altogether if you want to break it down.

Q. Now, when you returned to 1211, did you see Mr. Lattner? A. Did I see him, yes.

Q. Where was he? A. Sitting in the chair with his back toward the front door, too.

Q. He saw you when he arrived, did he not? A. How is that?

Q. He saw you when you came in, didn't he? A. He looked around and peeked around across in the corner.

Q. And he called you back? A. Yes.

Q. You say you went back? A. Yes.

Q. You say you expected an argument? A. Yes, I was looking for one.

Q. And you were already going, you testified on direct -- A. Yes,

72 I was ready for one.

Q. What did he say to you then? A. Then he asked me to have a drink.

Q. Did you have one? A. Yes, I had a can of beer.

Q. Who else was there? A. Who else was there?

Q. Yes. A. Well, there was his wife, him, and the two Richardson boys.

Q. Did you see Mrs. Spriggs when you were there talking to him? A. No.

Q. Did you hear her go down the steps to the kitchen? A. No, I didn't.

Q. Then there came a time when you went upstairs; is that correct? A. That is right.

Q. And when you went upstairs, was the light on or off? A. The light was off.

Q. Pardon me. A. Off.

Q. You turned the lights on? A. I turned them on after I picked the child up from the crib.

73 Q. Well, now, you turned the lights on when you went up to the room; did you not? A. No.

Q. What time was this, approximately? A. Well, it was about 8:40.

Q. About 8:00 o'clock? A. About 8:40.

Q. 8:40? A. Yes.

Q. Well, you went right in and laid down without turning the lights on? A. Yes.

Q. Were you on the same bed with the child? A. No, the kid was in the crib.

Q. The kid was in the crib, so how long did you lie down before you were disturbed by the kid crying? A. I can't say.

Q. Estimate? A. I can't say.

Q. Just give us a rough idea? A. Well, I would say about five minutes, maybe ten.

Q. Five minutes or ten minutes. Now, you had been lying on the bed for five or ten minutes when the kid started crying? A. The kid
74 was crying when I came in.

Q. The kid was crying when you went in? A. That is right.

Q. And you never turned the light on? A. No, I didn't turn the light on until after I picked the kid up from the crib.

Q. Now, let me get this straight: Isn't it a fact that when you first went in that room you laid down ten minutes before you picked the kid up? A. You just asked me that and I told you I picked the kid up afterward, after I laid on the bed.

Q. You laid on the bed about ten minutes? A. I said approximately about five or ten; not definitely ten.

Q. Very well, sir, approximately five or ten minutes. A. Yes.

Q. In other words, although the kid was crying in the dark when you went in, you laid down for five or ten minutes before you picked that child up; is that correct? A. Yes.

Q. And when you picked that child up it was in the dark; is that right? A. That is right.

Q. Well, now, how long after that was it before you turned the light on? A. Well, I guess it had been -- let's see -- it could have
75 been about a minute.

Q. And when you turned the light on, what did you observe, if anything? Did you observe the kid bleeding? A. I observed the kid bleeding.

Q. Where was the kid bleeding from? A. I don't know. I looked for it but I couldn't find it.

Q. Well, where did you see the blood? A. Yes, I seen the blood.

Q. Where was the blood coming from? A. I don't know. She had blood all over her.

Q. The blood was all over -- A. I can't hear you.

Q. The blood was all over on her face also, or just her body? A. I can't say that.

Q. You can't say that blood was on her face? A. I can't say blood was on her face. It could have been.

Q. You said it was on her body? A. I know blood was on her body.

Q. Was the kid dressed at that time? A. How is that?

Q. Was the kid clothed at that time? A. Well, no, she wasn't.

76 Q. Did she have anything on? A. No, she didn't have anything.

Q. Did you make a statement that you took her clothes off? A. What?

Q. Did you ever make a statement you took her clothes off after you found her? A. No.

Q. So the child was actually nude when you picked her up? A. She didn't have no clothes on.

Q. Could you tell that in the dark or did you observe that after you turned the lights on? A. I couldn't tell in the dark so I had to see it after the lights came on.

Q. You had her in your arms, did you not? A. How is that?

Q. You had her in your arms before you turned the lights on? A. I had her in my arms before I turned the lights on.

Q. You couldn't tell whether she was nude, could you? A. You don't expect me to see in the dark, do you?

Q. Couldn't you tell by the feel whether or not the kid was nude or had clothes on, a diaper? A. I guess you can but I didn't.

77 Q. So you didn't know whether she was clothed or nude before you turned that light on; is that right? A. That is right.

Q. Now, when you discovered her in that condition, what did you do? A. I called the mother and after I didn't get no answer from her, I started washing the blood from off my hands.

Q. How long did you remain up in that room after you went up before the mother came up? A. She showed up about a minute or maybe five minutes after I started to call her.

Q. Well, did you hear Mr. Lattner testify that the mother went downstairs just a short while before you came in? A. How was that?

Q. Did you hear Mr. Lattner testify that the mother went downstairs just a short while before you came in? A. I heard him.

Q. Didn't you hear him testify that you were upstairs about 40 minutes before the mother came up? A. I heard that too.

Q. Is that true? A. No.

Q. How did you feel? Were you excited when you saw this 11-month old baby bleeding? A. Well, the only one thing I could think of

78 was getting the blood off of me, off my hands; that is all.

Q. You were primarily concerned with getting that blood off you; is that your testimony? A. All I could think was get the blood off my hands.

Q. So you didn't call the mother; is that right? A. I can't hear you. Speak louder.

Q. You didn't call the mother; is that right? A. I called the mother.

Q. How many times? A. I called her about three times.

Q. Didn't you think that you should have gone down to get the mother under those circumstances? A. Would you run all around the house with blood over you?

Q. So when the mother came up and asked you what had happened to the kid, what did you say? A. I told her there was something wrong with the baby, she was bleeding, and to go and see about it.

Q. Now, you have explained how the blood got on your hands and your clothes? A. I picked the baby up from the crib.

Q. I say you have explained that; have you not? A. Yes.

79 Q. Have you explained how the blood had come to be on your privates? A. That is easy.

Q. That is easy? A. Yes.

Q. Explain that, Mr. Plummer, since you haven't explained it. Explain that to us how the blood come to be on your privates. A. I used the toilet.

Q. What? A. I used the toilet.

Q. And that is how the blood come to be on your privates? A. That is right. If you have any blood on you and you touch your privates and if you haven't been circumcised it will come off.

Q. How do you know that? A. Well, I looked it up.

Q. When did you look it up? A. In Lexington, Kentucky.

Q. Was that since you were charged with this crime? A. Well, yes.

Q. Very well, sir, now, did you give another reason to the officers when they were interrogating you concerning this case as to the presence of blood on your privates? A. A possibility.

80 Q. What other possibility could there have been? A. It could have come from somebody such as Mrs. Spriggs.

Q. As a matter of fact, you told them that it did come from Mrs. Spriggs, didn't you? A. I never said definitely that it did. I said it may could have.

Q. Well, you never said definitely that it came -- A. No, I didn't say definitely.

Q. You say it could have come from her? A. It could have come from her.

Q. And when did you tell them that you had last had sexual relations? A. How is that?

Q. When did you tell the officers that you last had sexual relations with Mrs. Spriggs? A. The night before.

Q. Would you say then as a result of the sexual relations, because of her physical condition at that time, you may have gotten blood on your privates? A. Well, yes, it could have come from that.

Q. I mean her physical condition at that time was such that the blood could have gotten on your privates? A. Possibly, I would have thought that. I may have said that.

81 Q. Have you ever had any trouble with Mr. Lattner prior to this evening when you spoke to him about making a pass at Mrs. Spriggs? A. I didn't hear you.

Q. Had you ever had any trouble with Mr. Lattner before the 18th of June about making a pass at Mrs. Spriggs? A. Yes, he had made one at her Thursday night.

Q. What did you say to him then? A. I didn't say anything to him.

Q. Now, isn't it a fact when you came in you sat around and enjoyed a couple of beers with Mr. Lattner there and the Richardsons? A. What is that?

Q. Isn't it a fact that when you came in around about 8:00 o'clock on the 18th of June that you sat back in the television room and had an enjoyable 15 or 20 minutes drinking beer? A. If you mean a can of beer, yes, I did.

Q. There were no hard words said at that time? A. You don't expect for a man to say anything or me to say any hard words to the man while his wife was there, or any of his company. Anything I got to say to him, I say to him personally.

Q. How old are you, Mr. Plummer? A. 29.

82 Q. How old? A. 29.

Q. Are you the same George Henry Plummer who was convicted of housebreaking on the 11th of August, 1945? A. Am I being tried for that again?

THE COURT: Just answer the question.

THE WITNESS: Yes.

BY MR. BLACKWELL:

Q. Are you the same George Plummer who was convicted on November 2, 1944, for housebreaking? A. I was.

Q. Are you the same George H. Plummer, Jr., who was convicted on August 25, 1946? A. I was.

Q. Or plead guilty to two charges of housebreaking? A. Housebreaking?

Q. Yes. A. I was.

Q. Are you the same George H. Plummer who was convicted on September 9, 1953, for theft from a vehicle? A. I was.

Q. I would like to inquire as to whether or not you are the same George H. Plummer who on August 11, 1943, was convicted at Hyattsville for a violation of the taking of an automobile? A. I was.

83 MR. BLACKWELL: No further questions.

MR. FAUNTLEROY: No further questions.

THE COURT: You may step down.

* * *

MR. FAUNTLEROY: Will the Court indulge me for just a minute? The defense rests, Your Honor.

* * *

BARBARA LOUISE SPRIGGS

was recalled as a witness in rebuttal on behalf of the Government and, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q. Mrs. Spriggs, you have already been sworn. I wish to ask you a few additional questions. You heard the testimony of the defendant, Charles H. Plummer, in this case concerning Mr. Lattner having made certain passes at you; is that correct? A. Yes.

84 Q. Did he make passes at you? A. Yes.

Q. Was there any argument on Mr. Lattner's part on June 18 between defendant Plummer? A. Not in my presence.

Q. You have heard the defendant testify that he could have gotten blood on his privates as a result of sexual relations with you the evening prior to June 18. I would like to ask you whether or not you were in such

physical condition at that time that if you had had sexual relations would there have been any blood? A. No.

Q. In other words, I would like to ask you when was the last time that you menstruated prior to June 18? A. As far as I can remember, it was about two weeks.

MR. BLACKWELL: Thank you. You may inquire.

CROSS EXAMINATION

BY MR. FAUNTLEROY:

Q. Now, Mrs. Spriggs, it has been a little while since June 18, 1954. I mean are you reasonably certain of what you say? A. Yes.

Q. There is no question in your mind? A. No.

Q. Do you remember when this particular period occurred in

85 July of 1954? A. No, I don't remember exactly when.

THE COURT: Speak up.

THE WITNESS: I don't remember exactly when it was.

BY MR. FAUNTLEROY:

Q. Would you know when it occurred in August of 1954? A. No.

Q. In other words, you don't know about the subsequent months to July, do you? You are not sure? A. I knew then but I don't know now.

Q. Well, now, I would just like to ask you this question: How could you be so certain about July and not be so certain about the subsequent months? A. Well, last year it was fresh in my mind and I used to keep a calendar and therefore I knew. But since then I have thrown my calendar away and I can't remember last year.

Q. Well, you kept a calendar for August? A. For the whole year.

Q. October, November, December, 1954? A. The whole year, yes.

Q. That is right? A. Yes.

Q. But you don't remember about August, September, October, November, and December of 1954? A. I don't remember now, no.

86 Q. But you say you are not certain after July? A. I remember from my statement that I made to the detective and the prosecuting attorney.

Q. Did you sign any statement? A. Yes.

Q. In your statement to the police did you make such an assertion? A. Yes, I told them when it was but I don't remember now.

Q. Well, did they refresh your recollection? A. I read my statement over, part of it.

MR. FAUNTLEROY: That is all.

REDIRECT EXAMINATION

BY MR. BLACKWELL:

Q. Is it your testimony, Mrs. Spriggs, that shortly after this crime that you were questioned by the members of the sex squad concerning whether or not -- questioned as to when you had last menstruated? A. Yes.

Q. And that was on or about the 18th or 19th of June; was it not? A. When I talked to them?

Q. Yes. A. Yes, it was the 19th.

87 MR. BLACKWELL: Thank you, I have no further questions.

* * *

MR. BLACKWELL: That is the Government's case, Your Honor. The Government rests.

* * *

MR. FAUNTLEROY: While we are here, Your Honor, just for the sake of the record, I would like to renew that motion that I made.

THE COURT: The motion will be denied.

There are no special charges I can see except the statute of indecent liberties and prior convictions. That is all except the regular charge. It is a question of fact and one on circumstantial evidence. I had better give one on circumstantial evidence. You are relying on that in this case. All right.

* * *

110 CHARGE TO THE JURY

THE COURT: (Youngdahl, J) Ladies and Gentlemen of the jury, the time has come now when it is incumbent upon the Court to charge the jury as to the law that governs the rights of the parties to this case. You must accept the law just as the Court gives it to you, regardless

of any opinions that you may have as to what the law is or ought to be. On the other hand, you are the exclusive judges of the facts in this case and it is your sole prerogative to determine what the facts are as indicated from the evidence here, and apply the law that the Court gives to you to those facts and bring in a just and fair verdict.

Now, because you are the exclusive judges of the facts, you have the responsibility of determining the weight and credibility that you will give to the witnesses who have been examined and testified before you. You will consider the manner and conduct and demeanor of the witness, his memory or lack of memory. I want to say when I use the pronoun, "his," I of course mean his or her. You will consider the faculty or lack of faculty of each witness to see and hear those things about which
111 he has testified; the ability or lack of ability of each witness to convey to you through the medium of words what he has seen or heard; the probability or improbability of the truth of the testimony given by the witnesses; any bias or prejudice shown by any witness which might have influenced his judgment or colored his testimony; the reasonableness or unreasonableness of the story that has been told; and all those other factors, including interest in the outcome of the case, which you as intelligent and experienced people take into consideration when you determine the difference between truth and untruth or truth and half truth.

Now, there has been evidence here that the defendant has been convicted a number of times on felony charges. The fact that a defendant has a criminal record has no bearing on the question of guilt or innocence as to the charges on which he is being tried. The law, however, admits a criminal record as to any person who takes the witness stand for the purpose of assisting the jury in determining whether or not to believe the witness. Any fact that may tend to show that a witness may not be a truth-telling individual is admissible in respect to such a witness whether the witness is the defendant or anyone else. Consequently, you may consider the defendant's criminal record not as bearing on the question of guilt or innocence in this case, because the defendant's guilt

112 or innocence must be established by the evidence irrespective of what his past may be. But you may consider his criminal record for the purpose and as a help in determining whether he was a trustworthy witness when he took the witness stand, and whether his testimony should be believed.

If you find that any witness has in this trial wilfully testified falsely or corruptly as to any material fact concerning which he could not possibly have been mistaken, you are at liberty, if you deem it wise to do so, to disregard the entire testimony of that witness, except as it has been corroborated by credible witnesses or by facts and circumstances established by the evidence in the case.

You are the fact finding branch of the Court, members of the jury, and in the performance of your duties you must not let sympathy, prejudice, or passion influence your judgment in any manner whatever. You must approach your judgment on the facts as disclosed by the evidence in open court and inferences reasonably deducible therefrom. You are not to speculate, conjecture, or guess.

Now, the defendant, Charles H. Plummer, Jr., has been on trial before you on the charge of violation of a section of the District of Columbia Code known as the Miller Act, more specifically, taking indecent liberties with a female child, under an indictment which reads as follows:

113 "The Grand Jury charges:

"On or about June 18, 1954, within the District of Columbia, Charles H. Plummer, Jr., did take immoral, improper and indecent liberties with Maria N. Simpson, a female child under the age of sixteen years, that is, about eleven months of age, with intent of arousing, appealing to and gratifying the lust, passions and sexual desires of the said Charles H. Plummer, Jr."

Now, to this indictment the defendant has entered a plea of not guilty and thus puts in issue each and every single element and allegation thereon.

The fact the defendant has been indicted and is charged with a crime does not amount to evidence of guilt and is not to be taken as an indication of guilt, because an indictment is merely the procedure in the machinery by which a defendant is brought before the Court and placed on trial.

It is a rule of law that every defendant in a criminal case is presumed to be innocent, and this presumption of innocence relates to every essential element of the offense and attaches to him throughout the trial until overcome by legal evidence which establishes his guilt beyond a reasonable doubt.

It is also the law that the burden of proof is upon the Government to prove the defendant guilty beyond a reasonable doubt. Now, proof beyond a reasonable doubt does not mean proof beyond all doubt whatso-
114 ever. It does mean proof to a moral certainty and not necessarily proof to an absolute or mathematical certainty. By a reasonable doubt, as its name implies, means a doubt for which you can give some reason to yourself and not just some speculation and conjecture. If after an impartial consideration of all the evidence you can say to yourself that you are not satisfied of the defendant's guilt, then you have a reasonable doubt.

If the evidence is as consistent with innocence as with guilt, or if the Government has merely proved that there is a strong probability that the act charged is true, then the Government has not sustained this burden. But on the other hand, if after such impartial consideration of all the evidence you can truthfully and candidly say to yourselves that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters pertaining to your own affairs in life, then you have no reasonable doubt.

Now, the section of the Code under which this indictment has been brought reads as follows:

> "Any person who shall take or attempt to take any immoral, improper or indecent liberties with any child of either sex under the age of sixteen years with the intent of arousing, appealing to,

or gratifying the lust or passions or sexual desires either of such
115 person or of such child, or of both such person and such child, or who shall commit or attempt to commit any lewd or lascivious act upon or with the body or any part or member thereof of such child with the intent of arousing, appealing to, or gratifying the lust or passion or sexual desires either of such person or of such child, or of both, shall be guilty of a violation of that section of the Code."

Now, briefly, the Government contends that on June 18, 1954, at 1211 18th Street, Northeast, in the District of Columbia in violation of that section of the Code, as spelled out in the indictment, the defendant took indecent liberties with Maria N. Simpson, a female child of the age of eleven months.

The Government contends that the child was left by the mother in the crib, clothed with a polo shirt, under shirt, and diaper when the mother went to the basement for some purpose. The mother came up from the basement and found the baby naked, blood all over, and bleeding from the vagina. She saw the defendant in the bathroom washing his hands. The defendant admitted to the mother picking up the baby, but he said he had gotten blood on his shirt and hands from doing that.

The Government contends that the defendant first told the officers that he called the mother, and later said he did not call to the mother.

116 At first, according to the testimony of the officer, he said he didn't know what the baby had on, and later he said he removed the safety pins and said he also removed a T-shirt and a diaper because they had blood on them.

The Government has also produced evidence from the hospital records and the intern indicating when the baby was brought to the hospital and there was a laceration of the posterior wall and fresh bleeding from the vagina. And the Government has also had an expert on the stand to testify there was a positive reaction of blood from one of the tests that was made, as far as the defendant's private parts is concerned.

Now, the defendant denies attacking or abusing this child in any way whatever. He concedes that he was in the room. And he contends that the child was crying and that was the reason why he picked up the child. He said it was dark and he didn't discover until later that there was blood on it, and that is the reason he got blood on himself because the child had blood on it. And he doesn't know how the child happened to get the blood.

These in the main are the respective contentions of the parties, members of the jury.

You are admonished that the evidence of any oral confession or confessions made by the defendant, while he was under police custody,
117 should be received with caution and scrutinized with care.

Now, the Government relies upon circumstantial evidence in asking for a verdict of guilty in this case. In criminal cases there are two types of evidence. One is known as direct evidence and another type of evidence is known as circumstantial evidence. By direct evidence is meant evidence of an eye witness who saw the act perpetrated. There is no direct evidence, of course, of any sexual abuse of the child. It is difficult to secure direct evidence of acts of that kind because they generally are committed in secret where there are no eye witnesses around. At any rate, the Government has no direct evidence of the commission of the act claimed in this case.

The second type of evidence is circumstantial evidence. That is the evidence the Government presents to you and upon which it relies for a conviction. Circumstantial evidence consists of circumstances from which the defendant's guilt may be inferred by the jury.

One cannot say that either of the two types of evidence is more reliable or stronger than the other. An eye witness, for example, may make a mistake in identifying a person whom he saw. His memory may be inaccurate or he may intentionally fabricate a story. Circumstances, too, may lead to an erroneous inference. On the other hand, at times if
118 circumstantial evidence is sufficiently strong, it may be even more convincing than direct evidence because circumstances speak for

themselves and if they are strong enough they may at times irresistibly lead to a definite conclusion.

The law permits conviction of a criminal offense on circumstantial evidence alone. In order, however, to justify a verdict of guilty on the basis of circumstantial evidence alone, the circumstantial evidence must be of such a degree and character as to point to the defendant's guilt, and also it must be inconsistent with the defendant's innocence. In fact, in order to justify a verdict of guilty on the basis of circumstantial evidence alone, such evidence must be inconsistent with any other theory except the theory of the defendant's guilt. If the circumstantial evidence is consistent with the defendant's guilt, but it is also consistent with the defendant's innocence, or in fact with any other theory except the theory of the defendant's guilt, then the defendant must be found not guilty.

Now, finally, members of the jury, you will consider this case in the light of the instructions that I have given to you, using the same practical approach, the same common sense and intelligence that you would use in determining any other important matter in your lives.

Your verdict must be unanimous. Upon reaching the jury room
119 you will first select a foreman or forewoman who will preside over your deliberations in the jury room and speak for you when you return a verdict to this Court. Then you will reach a verdict without sympathy, passion, or prejudice and reach a verdict impartially without any emotion for one side or the other.

A written verdict form is being sumitted to you with a blank space for you to write in either the word "guilty," or the words "not guilty," as your verdict happens to be. Have your verdict signed by your foreman or forewoman, dated, and returned to this Court.

Is there anything further?

MR. BLACKWELL: The Government is satisfied, Your Honor.

MR. FAUNTLEROY: Satisfied.

THE COURT: Will you agree for the record that the jury may return a sealed verdict?

MR. BLACKWELL: Yes.

MR. FAUNTLEROY: Yes.

(Thereupon, at 11:20 a.m. the jury retired to the jury room to deliberate its verdict.)

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,355

CHARLES H. PLUMMER, JR., APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

OLIVER GASCH,
United States Attorney.

CARL W. BELCHER,
JOEL D. BLACKWELL,
WALTER J. BONNER,
Assistant United States Attorneys.

United States Court of Appeals
For the
District of Columbia Circuit

FILED JUN 23 1958

Joseph W. Stewart
CLERK

QUESTIONS PRESENTED

In the opinion of the appellee the following questions are presented on appeal.

1. Is the question of alleged illegal arrest available for review by collateral attack?

2. Is the question of alleged illegal detention, or alleged failure to bring a prisoner before a committing magistrate without unnecessary delay, available for review by collateral attack, particularly when no confession was obtained?

3. Does the record show appellant voluntarily submitted to the tests for presence of blood?

4. Does failure of counsel to make objections to an alleged illegal arrest, illegal detention, or alleged failure to bring appellant before a committing magistrate without delay, when no confession resulted therefrom, demonstrate ineffective assistance of counsel?

5. On appeal from the denial of a motion to vacate sentence, can appellant base a claim of ineffective assistance of counsel upon the failure of counsel to raise the defense of insanity at trial, when no such contention was made in the motion to vacate sentence filed in the District Court?

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UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE FACTS

On July 6, 1954, an indictment was filed in the District Court charging appellant with taking indecent and immoral liberties with one Maria N. Simpson, a female child eleven months old, in violation of District of Columbia Code, Title 22 § 3501(a) (Crim. No. 726-54) (J.A. 1). On July 9, 1954, appellant entered a plea of not guilty (J.A. 9). On November 16, 1954, appellant was adjudged to be of unsound mind (J.A. 10), and was committed to the U.S. Public Health Hospital, Lexington, Kentucky. An adjudication by the court that appellant was mentally competent was made on April 29, 1955 (J.A. 10), and trial by jury was commenced on September 14, 1955 (J.A. 14). On September 16, 1955, appellant was found guilty as indicted (J.A. 1) and on October 7,

1955, was sentenced to serve a term of imprisonment of from three to nine years (J.A. 2). A direct appeal was taken to this Court by appellant's counsel in the District Court. This Court affirmed the judgment. *Plummer* v. *United States,* 99 U.S. App. D.C. 50, 237 F.2d 204 (1956).

On July 24, 1957, appellant filed a Motion to Vacate Sentence pursuant to 28 U.S.C. § 2255 (J.A. 2-6). In his motion, appellant alleged, that his arrest without a warrant was unlawful. He further alleged that he was not arraigned without unnecessary delay, and that as a result of his illegal detention evidence was procured from him by "search inspection or blood test" (J.A. 4) in violation of his rights under the Fifth Amendment (J.A. 4-5). Appellant also complained that his counsel at trial failed "to have the evidence suppressed that was obtained without the necessary warrants of search and seizure" (J.A. 5) and "allowed the defendant to be convicted upon the infringements of the Constitution (J.A. 5). The motion was subsequently denied without a hearing by the District Court on October 31, 1957, on the ground that "[t]he motion, files and records of the case conclusively show that the petitioner is entitled to no relief" (J.A. 5). This appeal followed.

STATUTE INVOLVED

Title 28 U.S.C. § 2255 provides, in pertinent part:

> *Federal custody; remedies on motion attacking sentence.*—A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.
>
> A motion for such relief may be made at any time.
>
> Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to

be served upon the United States Attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appeal appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

SUMMARY OF ARGUMENT

1. Alleged illegal arrest, detention, questioning, and failure to bring appellant before a committing magistrate without unnecessary delay, particularly when no confession resulted, are not available for review on a § 2255 motion.

2. The record clearly discloses that the tests for presence of blood were submitted to voluntarily by appellant.

3. A contention of ineffective assistance of counsel cannot be supported by allegations that counsel failed to object to an alleged illegal arrest, detention, questioning,

and failure to bring appellant before a committing magistrate without delay, particularly when no confession resulted.

4. Appellant cannot base a claim of ineffective assistance of counsel on the failure of counsel to raise the defense of insanity at trial, particularly when no such contention is made in appellant's motion to vacate sentence pursuant to 28 U.S.C. § 2255.

ARGUMENT

I

Appellant's Motion to Vacate Was Properly Denied

Appellant has raised, on appeal, four contentions which constitute the basis of his claim, that the District Court erred in failing to grant him a hearing on his motion to vacate. These contentions may be summarized as follows:

First, appellant was alleged to have been arrested by the police without a warrant and without probable cause (Br. 8);

Second, appellant was alleged to have been illegally detained and questioned by police subsequent to his illegal arrest (Br. 8), and was not taken before a committing magistrate without unnecessary delay (Br. 9, 10);

Third, that tests for the presence of blood were made on appellant's person allegedly without his consent (Br. 9);

Fourth, that appellant was allegedly deprived of effective assistance of counsel in that counsel failed to raise an issue as to appellant's sanity (Br. 10), and, apparently, because of counsel's failure to object to the procedures outlined in one, two, and three above (Br. 8-12).

A. *Alleged Illegal Arrest and Detention Cannot Be Raised on Collateral Attack.*

An illegal arrest, in and of itself, cannot be grounds for relief either by way of direct apeal or collateral attack. See *Edwards* v. *United States,* — U.S. App. D.C. —, (Nos. 14,172, 14,175, 14,176; decided May 9, 1958). *Cf. Newman* v. *United States,* 87 U.S. App. D.C. 419, 184 F.2d 275 (1950), *cert. denied,* 340 U.S. 921 (1951).

Here, however, it is clear that the arrest was in fact and law based on probable cause. Mrs. Barbara Spriggs, mother of the abused infant, had been living with appellant for about a month prior to June 18, 1954 (J.A. 19). On the date in question, appellant arrived home at approximately 4:15 P.M. (J.A. 48), later leaving the premises with Mrs. Spriggs, two children, and a friend, appellant and his friend stopping off at a beer garden (J.A. 48). Appellant returned to their home about 8:30 P.M. (J.A. 49), and drank a beer in company with the landlord of the premises, who occupied the first floor of the building (J.A. 49, 23, 24). After consuming his drink, appellant went upstairs to his apartment (J.A. 24, 49) and according to his testimony, "laid down across the bed" (J.A. 49). The infant Maria was upstairs, asleep in her bed (J.A. 16-17). Mrs. Spriggs accompanied by her older children was in the basement at this time, preparing supper (J.A. 16, 24).

After an absence of approximately an hour, Mrs. Spriggs returned to her apartment and found the child in bed, completed naked, bleeding from her vagina, and blood all over the child's bed (J.A. 17). Appellant was in the bathroom, washing his hands (J.A. 17). Mrs. Spriggs testified that appellant told her that on picking the baby up he had gotten blood all over his shirt, but that he didn't know what had happened to the baby (J.A. 18). Mrs. Spriggs again asked appellant what had happened to the baby, but "[h]e didn't answer me" (J.A. 18).

The infant was taken to D. C. General Hospital (J.A. 18), examined, and found to be suffering from a "laceration on the posteria wall of the vagina" (J.A. 30-31), the

cause being undetermined (J.A. 31).

Mrs. Spriggs spoke with an officer on duty at the hospital, who "called the sex squad detectives" (J.A. 18). These officers responded to the call and met Mrs. Spriggs at the hospital about 3:00 A.M. (June 19, 1954) (J.A. 32). Sergeant Walter E. Grove spoke with Mrs. Spriggs at the hospital and again, sometime later, at her home. He then interviewed the landlord, Mr. Lattner, and his wife "as to different things that had happened during the evening and the early morning hours of the 19th" (J.A. 32). The officer then questioned appellant in the Lattner living room (J.A. 33). Appellant was subsequently taken into custody, removed to police headquarters, and later to the central cell block and identification bureau (J.A. 34-35).

From the evidence adduced at trial, already set out above, it can reasonably be assumed that these same witnesses furnished the following information at the time of their initial investigation. Appellant was present in the bedroom with the infant, the condition of the baby, the blood on appellant's clothing, appellant being found washing his hands, his reticence to discuss the matter at any length with the child's mother, and the hospital examination revealing the type of wound from which the infant was suffering.—This information afforded the police more than adequate probable cause to take appellant into custody.

It is equally clear from the uniform rulings by the courts, that illegal detention, or the admission into evidence of a confession obtained from one illegally detained, is not a ground for collateral attack against the sentence and judgment following thereupon. *Edwards* v. *United States, supra; Smith* v. *United States,* 88 U.S. App. D.C. 80, 187 F.2d 192 (1950), *cert. denied,* 341 U.S. 927 (1950); *Davis* v. *United States,* 214 F.2d 594 (7th Cir. 1954); *Young* v. *Sanford,* 147 F.2d 1007 (5 Cir. 1945), *cert. denied,* 325 U.S. 886 (1945); *Miller* v. *Hiatt,* 147 F.2d 690 (3 Cir. 1944); *Cash* v. *Huff,* 142 F.2d 60, (4 Cir. 1944), *cert. denied,* 323 U.S. 747 (1944). *Burall v. John-*

son, 134 F.2d 614 (9 Cir. 1942), *cert. denied,* 319 U.S. 768 (1942). And the placing into evidence of a confession (or admissions) obtained from one who is not brought before a committing magistrate without unreasonable delay, falls within the orbit of reasoning of these same cases. See also *Gilliam* v. *United States,* — U.S. App. D.C. —, (No. 13,956; decided April 24, 1958).

But the record in the instant case discloses that, in fact, *no* confession was ever obtained from appellant. He continuously denied any abuse of the child when questioned by the police (J.A. 44, 46, 49), and continued to do so when entering his plea (not guilty) to the charge (J.A. 9), and during his testimony at the trial (J.A. 50). Because it is clear that no statement was obtained, even if undue detention prior to arraignment is disclosed in this record, appellant has no grounds to complain. *Cf. Brown* v. *Allen,* 344 U.S. 443, 476 (1956).

B. *Appellant Voluntarily Submitted to the Tests for Presence of Blood.*

In this brief (Br. 9) appellant states that "The most blatant display of police malpractice was the taking of the blood samples from the person of the appellant." But, in fact, no blood samples were ever taken from appellant's person. Tests were employed to determine *if blood was present on the body of appellant* (J.A. 34-35, 36, 41, 42-44).

Appellant further contends, that at one point during the direct examination of a police officer, the officer testified that defendant refused to submit to the taking of a blood sample (Br. 9). Appellant then concludes that it can be 'reasonably assume[d] that force or coercion was utilized in the taking of the blood samples" (Br. 9).

In stating that he did not, in effect, voluntarily submit to the presence of blood test, appellant is referring to the testimony of Sergeant Walter E. Grove (J.A. 34-35). This officer testified in pertinent part on direct examination as follows (J.A. 34-35):

"At about 6:00 o'clock I went to the cell block, brought

> him [appellant] up to the identification bureau and asked him if he would submit to a test for blood on his clothing and on his person, and he said that he *wouldn't*" (Emphasis supplied).

Without a single break in his testimony, Sergeant Grove went on to say that the test was taken in his presence, and after its conclusion he questioned appellant as to the results of the test (J.A. 35).

Shortly thereafter, on *cross-examination,* the following colloquy took place between defense counsel and the officer (J.A. 36):

> "(Mr. Fauntleroy): And when you took him down to headquarters to ask him whether he would submit to this blood test, he didn't make any objection, did he? He volunteered?
> "(Sergeant Grove): No, he did not. *He made no objection*" (Emphasis supplied).

Noting this inconsistency, appellee contacted Mr. David Harrison, who had been an official court reporter at the time of appellant's trial, and who had reported the proceeding in the District Court. On checking his original notes, Mr. Harrison discovered that he had inadvertently substituted the word "wouldn't" for the word "would" on the first line, page 40 of the transcript of record (J.A. 35). An affidavit to this effect was sworn to by Mr. Harrison, and filed in this Court on June 19, 1958, accompanied by appellee's motion to correct the transcript of record.

With this error corrected, the apparent contradiction in Officer Grove's testimony on direct and cross-examination disappears, and it is abundantly clear that appellant voluntarily submitted to the tests in question.

C. *Appellant Was Effectively Represented by Counsel.*

Appellant's contentions that he was illegally arrested, detained, questioned, and tests taken against his consent were performed, have heretofore been shown to be without merit. He would now use these same points to support his charge of ineffective assistance of counsel. These

contentions, in and of themselves, are without merit, and cannot, therefore, act as foundation posts for such a claim. And if merit could be found in one or more of these contentions, the result would be the same, since such allegations are "directed solely to the skill, the relative competence, of trial counsel in matters as to which counsel made decisions, or would have to make decisions, in the course of the trial." *Mitchell* v. *United States*, — U.S. App. D.C. —, (No. 14,198; decided June 12, 1958), at pages 2 and 3 of the slip opinion. Failure of counsel to act in these aforementioned areas would at most constitute "improvident strategy, bad tactics, mistake, carelessness, or inexperience," and cannot be said to amount to ineffective assistance of counsel, in and of themselves. See *Edwards* v. *United States, supra,* at pages 2 through 4 of the slip opinion. An appellant fails to raise any point concerning his counsel's condition or conduct, such as "physical or mental disability on the part of counsel, or of intoxication, fraud or misrepresentation, [or] dual interest," which could be considered as situations having special features and possibly worthy of review. See *Mitchell* v. *United States, supra,* at pages 2 of the slip opinion.

Appellant raises another contention, however, on which to base his claim of ineffective assistance of counsel. He states, in effect, that counsel was ineffective because he failed to raise the defense of insanity at trial. It is clear at the outset that this point was not raised in appellant's motion to vacate sentence (J.A. 2-6). Indeed, appellant frankly concedes this to be so (Br. 10). This matter, therefore, not having been before the District Court in its consideration of the motion, is not properly before this Court at this time. *Council* v. *Clemmer*, 85 U.S. App. D.C. 75, 77, 177 F.2d 22, 25 (1949), *cert. denied*, 338 U.S. 880 (1949); *Walker* v. *United States*, 218 F.2d 80, 81 (7 Cir. 1955). *Cf. Waterman* v. *McMillan*, 77 U.S. App. D.C. 310, 135 F.2d 807 (1943), *cert. denied*, 322 U.S. 749 (1944).

Appellant argues, however, that since he is a layman

not versed in the law, this Court should take cognizance of this fact, and, apparently, consider this newly raised contention. But the motion is utterly devoid of *any* matter or material which could possibly be considered as raising this point. Moreover, there is nothing in the transcript of the trial, which would cause the District Court, in reviewing the files in this case, to be made aware of any peculiarities on appellant's part at the time the offense was committed.

Mrs. Spriggs had known appellant for a year and a half prior to trial (J.A. 15), and for approximately two months prior to the crime (J.A. 19). About one month before the offense she began living with appellant, sharing the same bed, and living in the same apartment (J.A. 19). Appellant, prior to June 18, 1954, had treated the children of Mrs. Spriggs "like a father would", and had been very kind to them (J.A. 20). In addition, in the month previous to the crime, Mrs. Spriggs had enjoyed satisfactory sexual relations with appellant.

When, on the date in question Mrs. Spriggs found her child in the condition set forth earlier, saw appellant washing his hands (J.A. 47), and inquired of him as to what had happened, he gave the rational answer that he had picked up the baby and gotten blood all over his shirt (J.A. 18). And his subsequent refusal to answer any more questions (J.A. 18) was in line with any normal, perhaps frightened person, who has been come upon immediately after committing a great wrong. Nor do any of appellant's answers to questions by the police give hint of any irrational conduct or thinking on his part (J.A. 19, 33-35, 44-46). The record of the case does not itself raise the issue.

In any case, even if the insanity point had been properly raised by appellant in his motion, it could not properly support his contention of ineffective assistance of counsel. It is likely that counsel did investigate the possibility of raising this defense and found himself without expert or lay support. It is equally possible that appellant himself did not wish to raise such a defense,

considering that he would be completely acquitted of the charge, and not being desirous of a commitment to St. Elizabeth's Hospital following a verdict of not guilty by reason of insanity. Under such conditions, trial counsel might deliberately, and properly so, decide, as a trial tactic, to avoid the raising of such defense. And this Court will not substitute its judgment of trial tactics for the lawyer in the forum. *Wyche* v. *United States,* 90 U.S. App. D.C. 67, 193 F.2d 703 (1951), *cert. denied,* 342 U.S. 943 (1952), *reh. denied,* 343 U.S. 921 (1952). See also *Felton* v. *United States,* 83 U.S. App. D.C. 277, 170 F.2d 153 (1948), *cert. denied,* 335 U.S. 831 (1948).

If the allegation had been raised in the motion, and it could now be said that counsel committed an error in judgment or was found lacking in skill by failing to press an insanity defense, the result would still be the same. Mere lack of skill or errors in judgment at trial are insufficient to support a charge of ineffective assistance of counsel. *Mitchell* v. *United States, supra,* pages 4, 9, 11 of the slip opinion; *Edwards* v. *United States, supra,* page 3 of the slip opinion.

CONCLUSION

Wherefore, it is respectfully submitted the judgment of the District Court be affirmed.

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